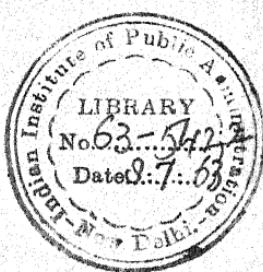


THE ABOLITION OF THE  
LABOUR APPELLATE TRIBUNAL



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## P R E F A C E

THE CASE PROGRAMME in Indian Administration is a modest endeavour to unravel the complexities (some might call them mysteries) which surround the policy-making process in Government. Within the Constitutional framework, the formulation of public policies in India lies primarily within the initiative of the Executive; while the role of the Legislature, apart from legislation itself, is to oversee, control, check and influence the Executive, which is directly answerable to the Legislature. The public services in India are responsible for the implementation of public policies laid down by the Executive. They also assist and advise the Executive in the formulation of policies and programmes. Their role in this regard is threefold: evolving a plan and organisation for the execution of a particular objective laid down by the Executive, and ensuring that these correctly fulfil that objective; devising the requisite legislation for consideration by the Executive, and its submission by the Minister concerned to the Legislature; and translating the policy into action. The process of policy-making is, in the world of reality, much more complex and diffused than might appear from a simplified division of function; indeed it is entwined with the environment surrounding and pervading the whole process.

Two volumes of cases in Indian administration have already appeared. The present volume includes a case study about three inter-related policy decisions of the Government of India—the decision to set up the Labour Appellate Tribunal (1950); the decision to abolish the Appellate Tribunal (1956); and the review and decision not to revive it (1961).

This case study attempts to examine how, in a developing country with a parliamentary democratic form of Government, committed to a policy of planned economic development combined with an endeavour to establish social justice, the formulation of public policies displays a number of significant features. There is a continuous balancing by the Government of the conflicting interests of different groups of the community; rival pressures of different 'interest' groups have to be recognised, reckoned and dealt with, always in the larger interests of the community.

and the nation; and there is a continuing interaction between the administrative organisation responsible for policy-making and its environment, comprising a chain of institutional relationships with outside groups, associations and the general public.

The mode of presentation of the present case study, while profiting by and approximating to the pattern evolved by the U.S. Inter-University Case Programme, follows a somewhat more open style. This is in keeping with the present policy of the Committee on Case Studies; the Committee considers that an element of flexibility in form and presentation is necessary at this still rather early stage of the Indian case programme.

Shri B.S. Narula has carried the main burden of nursing the case programme. Two years of devoted effort on his part, as Secretary to the Committee on Case Studies, in addition to his other work, has enabled our programme to get off to a start and on the way. It is with a sense of special pride and pleasure that the Committee publishes his own case study in this third volume of the studies.

The Committee is specially grateful to Mr. Edwin A. Bock, Staff Director, the Inter-University Case Programme, New York, for the technical assistance rendered by him in helping to organise the case programme in Indian administration, and to the Ford Foundation, New Delhi, for their financial grant for the purpose.

S. S. KHERA  
*Chairman*  
*Committee on Case Studies*

Indian Institute of Public Administration,  
New Delhi, May 15, 1963.

## INTRODUCTION

THE PUBLIC POLICIES the present case study mainly deals with are concerned with the machinery in India for appeals against the decisions of industrial tribunals on different labour matters. The study brings out how the labour and the industry exerted pressure to influence the Government's policies in this particular area, and how the Government of India tried to balance these conflicting pressures through tripartite institutional arrangements for associating the two interest groups with the formulation and re-formulation of its labour policies, through direct consultations and negotiations with them, and through promoting bipartite discussions and agreements between the all-India organisations of the workers and the employers. The study highlights the importance of bipartite agreements and tripartite labour consultative machinery as the mechanism to contain and accommodate mutually the rising pressures of the two interest groups, thereby reducing the Government's involvement in the conflict. The case also illuminates some important aspects of the mutual interdependence of an administrative organisation (the Union Ministry of Labour and Employment) and its environment, the complexity of the decision-making process in the Government of India, and the impact on this process of the requirements of planning and of the personal beliefs and values and the personality of the Central Labour Minister at the helm of the affairs at the time.

The three policy decisions of the Government regarding the creation (1950), the abolition (1956) and 'non-revival' (1961) of the Labour Appellate Tribunal (L.A.T.), which form the subject of the case study, are described in the wider background of the Government's general policies concerning labour-management relations. The main focus of the study, however, is the decision concerning the abolition of the Appellate Tribunal; and the developments leading to its creation and the proposals for its revival have been dealt with from that perspective. In the section on the decision to abolish the Labour Appellate Tribunal, attention has been concentrated on the award of bonus to the workers by the L.A.T., which

was the central issue in the controversy regarding the abolition of the Appellate Tribunal.

As the case narrative covers a long stretch of 14 years, it runs into a full book-length. Such a length could not be helped as it was essential to give all significant facts and to refer *in extenso* to the statements of the different actors on the scene and to the resolutions and reports of the various organisations affected by the three decisions. Important controversial or policy statements, made by the different parties, have been quoted to the extent necessary to avoid any subjective bias which might have arisen by their summarising. The most important awards by the Appellate Tribunal have been mentioned in the main case narrative, and some others in the Appendices, to enable the reader to make his own judgement how far did the L.A.T. succeed in its objective of achieving uniformity of basic principles to govern the adjudication of disputes concerning bonus, wages, etc. The events have been narrated in time sequence, and divided into certain periods for purposes of significance and clarity. For each period the stand taken by the different interested parties is indicated separately but chronologically, even if it has meant chronicling of a repetition of their views. This has been found necessary to enable the reader to form for himself a clear idea of the impact of the different factors and forces on the three decisions of the Government concerning the Appellate Tribunal.

\* \* \*

We are highly indebted to the Government of India (Ministry of Labour and Employment) for its permission to use the relevant departmental records for purposes of the case study. Thanks are in particular due to Shri Khandubhai K. Desai, M.P., formerly Union Minister of Labour (September 1954 to April 1957); Shri S. Lall, Chairman, Advisory Board, Indian School of Public Administration, New Delhi, and formerly Secretary, Department/Ministry of Labour, Government of India (April 1946-February 1950); Shri V.K.R. Menon, Director, I.L.O., India Branch, and formerly Secretary to the Government of India, Ministry of Labour (March 1950-September 1953); Shri P.M. Menon, the present Secretary to the Union Ministry of Labour

and Employment; Shri B.N. Datar, Chief, Labour and Employment Division, Planning Commission; Shri P. Chentsal Rao, Secretary, the All-India Organisation of Industrial Employers, and co-Secretary, Joint Consultative Board of Industry and Labour; Shri S.R. Vasavada, General Secretary, all-India I.N.T.U.C., New Delhi; Shri G.D. Ambekar, President, I.N.T.U.C., Bombay Branch; Shri G. Ramanujam, President, I.N.T.U.C., Tamil Nad Branch; and Shri G.B. Pai, Advocate, Supreme Court. Thanks are also due to the Employers' Federation of India, Bombay; the All-India Manufacturers' Organisation, Bombay; the Hind Mazdoor Sabha (Delhi Branch and the headquarters at Bombay); the All-India Trade Union Congress, New Delhi; and the United Trades Union Congress, Calcutta; for their supplying some of the basic data for the case study.

\* \* \*

The case writer owes his special gratitude to Shri S.S. Khera, the Chairman of the Committee, to Shri L.P. Singh, Special Secretary to the Government of India, Union Ministry of Home Affairs, and Editor, the Indian Journal of Public Administration, and to Prof. V.K.N. Menon, Director of the Institute, for their advice and guidance. He is also indebted to Shri M.S. Ramayyar, Deputy Director of the Institute for his encouragement and support; to Shri S.S. Sahasranaman of the Union Ministry of Labour and Employment for his general help and suggestions; and to Shri J.P. Sharma, of the Institute's Case Unit, for his invaluable research assistance at all stages of the case preparation.



## **THE BACKGROUND**

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## 1. INDUSTRIAL RELATIONS ON THE EVE OF INDEPENDENCE

AT THE TIME OF the formation of the National (Interim) Government in September 1946, industrial disputes in India were governed by the Trade Disputes Act, 1929, as amended in 1934 and 1938. The inadequacy of the provisions of the Act to meet the need for industrial peace during the Second World War had led the Government in January 1942 to supplement the law by Rule 81-A of the Defence of India Rules. By virtue of the powers conferred by this Rule, the Government of India could refer any dispute to adjudication and enforce the award. A strike or walk-out was illegal during the term of an award. A number of adjudicators were appointed. The principle of compulsory adjudication of disputes was thus introduced for the first time in India as an emergency measure during the Second World War.

An important Provincial industrial relations law on the eve of Independence was the Bombay Industrial Disputes Act. It had been enacted in 1938 to replace the Bombay Trade Disputes Conciliation Act of 1934, with the recrudescence of industrial unrest immediately after the assumption of office by the Indian National Congress, following the elections held in 1937 under the Government of India Act, 1935. Shri Gulzari Lal Nanda, formerly General Secretary of the Textile Labour Association, Ahmedabad, who was then the Parliamentary Secretary for Labour and Excise in the Congress Government, was the chief architect of the new legislation. The Act of 1938 was a novel experiment in India and provided not only for appointment of adjudicators, conciliators, etc., but also for the creation of a permanent machinery in the form of a Court of Industrial Arbitration, which marked the beginning of labour judiciary in India. The Act aimed at prevention of strikes and lock-outs and made it obligatory on both the employers and workers to give prior notice for change in conditions of service. It also provided for recognition of unions; for enforcement of agreements arrived at by collective bargaining; and for submission of existing or future disputes to arbitration. The Act was applied

to the cotton textile industry throughout the Bombay Province and to silk and woollen textiles and hosiery in specified areas. An amendment in 1941 vested discretionary power in the Provincial Government to refer any industrial dispute to the arbitration of the Industrial Court if it were satisfied that the continuance of the dispute was likely to cause serious or prolonged hardship to a large section of the community or seriously affect an industry and the prospects and scope of employment in it or cause a serious outbreak of disorder or a breach of the public peace.

The organisation of trade unions was regulated by the Indian Trade Unions Act, 1926. It provided for registration of trade unions to give them legal and corporate status and grant of immunity to their executives and members from civil and criminal liability for actions furthering trade union objectives.<sup>1</sup>

On the eve of Independence, there existed two important all-India organisations of the workers—the All-India Trade Union Congress and the Indian Federation of Labour. The All-India Trade Union Congress (A.I.T.U.C.) had been set up in October 1920 through the initiative and leadership of the Indian National Congress. A split in the organisation took place in 1929 on the question of its attitude towards the Royal Commission on Labour. The militant nationalist-Communist leadership of the A.I.T.U.C. boycotted the work of the Commission. There were further splits in its ranks in 1931 and 1941. The last of these was on the question of supporting the Government's effort in the Second World War. The trade unionists belonging to the Radical Democratic Party of Shri M.N. Roy left the A.I.T.U.C. and formed in November 1941 a new organisation, called the Indian Federation of Labour. The A.I.T.U.C. was from 1944 onwards dominated by the Communists. The A.I.T.U.C.

1. The Indian Trade Unions Act, 1926, was amended in November 1947, to provide for compulsory recognition of unions, protection against unfair labour practices and conferring of bargaining rights. But the amending Act was never brought into force.

The total membership of unions (in all establishments, and not only factories) which submitted returns was 1.7 million in 1947-48, and 1.9 million in 1949-50. The average daily employment in factories was 2.27 million in 1947, and 2.25 million in 1950; in plantations, 1.18 and 1.25 million, and in mines .32 and .35 million respectively.

affiliated itself to the World Federation of Trade Unions when the latter was formed in 1945.

## 2. THE LABOUR RELATIONS POLICY OF THE INDIAN NATIONAL CONGRESS

As early as 1929, Shri Jawaharlal Nehru, presiding over the historic Congress session of that year, had emphasised that the Indian National Congress must hold the balance between capital and labour. The Resolution on "fundamental rights", adopted at the Karachi Session of the Congress in 1931, assured that the future "Swaraj Government" would guarantee "the right of labour to form unions to protect their interests with suitable machinery for settlement of disputes *by arbitration*."<sup>2</sup> The All-India Congress Committee, while approving the Resolution, dropped the words "by arbitration".

The Congress Election Manifesto adopted by the All-India Congress Committee in 1936 stated, "...in regard to industrial workers, the policy of the Congress is to secure to them...suitable machinery for the settlement of disputes between employers and workmen,...and the right of workers to form unions *and to strike*<sup>3</sup> for the protection of their interests." This was reiterated in the 1945 Election Manifesto.

### *National Planning Committee's Views on Adjudication*

The Labour Sub-Committee<sup>4</sup>, set up by the National Planning Committee in June 1939, with Shri N. M. Joshi as Chairman, in its report, recommended as follows:

"For peaceful settlement of trade disputes recognition by the employers of trade unions for the purposes of collective bargaining is necessary.

"The system of arbitration in which the decisions of the arbitrators are binding on both parties must be rejected.

"Machinery for the settlement of disputes should be

2. Italics by the author.
3. The members of the Sub-Committee included Shri V.R. Kalappa; Shri B. Shiva Rao; Dr. Suresh Chandra Benerjee; Shri H.B. Chandra; Prof. S.R. Bose; Dr. B.R. Seth; Shri S.R. Deshpande; Dewan Chaman Lal; Shri Padampat Singhania; Miss Kapila Khandwalla; Shri S.D. Saklatwalla; Shri N.V. Phadke; Miss Godavari Gokhale; Shri G.P. Chakravarti; and Shri V.V. Giri.

provided by Government in the form of a Conciliation Board and an Industrial Court.

“A fair trial should be given to the Central Trade Disputes Act, 1929.”

In a note of dissent Shri V.V. Giri observed:

“As a trade unionist of some standing, I have always stood for conciliation machinery without enforced arbitration methods, but as a member of Government for Labour and Industries in Madras after giving the most exhaustive and the fairest trial to the Trade Disputes Act, I felt matters reached a deadlock when the employers refused to carry out the most reasonable recommendations of a Conciliation Board or a Court of Inquiry or agree to arbitration, because they felt, at a certain stage, they could crush the workers and their spirit for collective bargaining. The result of that was the extinction of trade unionism after that dispute was over and the workers brought to their knees by the employers. *I feel that so long as the Government intervenes as a last resort the method of enforced arbitration will be useful to the workers.*<sup>4</sup> Therefore, power may be taken by legislation, with all the safeguards necessary in the interests of the workers and industry, that a trade dispute shall be submitted to compulsory arbitration in exceptional cases only, when all other methods have failed and after giving opportunities to the parties to the dispute to be heard.”

The above views were endorsed by Shri V. R. Kalappa, Member-Secretary of the Committee. Dr. B.R. Seth, another member, differed with the view expressed in the report of the Sub-Committee that the system of arbitration in which the decisions of the arbitrator were binding on both parties must be rejected. He explained, “...the suggestion that if the decision of the arbitrator or industrial court is not accepted, then the disputes should be allowed to be settled by a trial of strength between the two parties, seems to be somewhat absurd. The workers who are the owners of a perishable commodity like labour can hardly enter into any fair trial of strength with the employers without inviting some serious consequences to themselves. The failure of majority of strikes and the frequent

4. Italics by the author.

appeals of the workers to Government for conciliation and arbitration bear ample testimony to the above fact... Besides the helplessness and the weakness of the workers, there is another consideration which calls for compulsory arbitration, and that is public peace. Strikes and lock-outs which are likely to result from the trial of strength between the parties are not only risky and costly for the employers and employees but are also likely to endanger the public peace, the maintenance of which is the primary function of the Government."

The National Planning Committee<sup>5</sup> considered the Sub-Committee's report on 6-8th May, 1940 and passed a number of resolutions, one of which stated: "Under Planned Economy, legislation should be passed for adjudication of industrial disputes by impartial tribunals." During discussion on the resolutions, Prof. R. K. Mukerji said that he was opposed to any provision which might come in the way of strikes even under planned economy. Shri N. M. Joshi stated that, as much would depend on the nature of the new State, he would like to see the future State before he could commit himself to the principle underlying the resolution.

#### *Recommendations of the Economic Programme Committee*

The Economic Programme Committee appointed by the Indian National Congress to draw up an economic programme for the Congress in accordance with its Election Manifesto of 19th December, 1945, in its report submitted in January 1948, *inter alia*, suggested, "Stable and friendly relations should be established between labour and capital through increasing association of labour with management in industry and through profit-sharing. ...In the interest of uninterrupted production, all disputes between employers and workmen should be settled through the machinery of conciliation, arbitration and adjudication."

\* \* \*

It may be worthwhile to note that the Working Committee of the Indian National Congress had, in a resolution passed on 18th June, 1934, specially emphasised that confiscation of property and class war were contrary to the Congress creed of

5. Its members included Shri Gulzari Lal Nanda.

non-violence that envisaged a healthier relationship between capital and labour.

The Working Committee at its session at Wardha on 13th August, 1946, resolved:

“...avoidable strikes cannot have the backing of public opinion...

“...in particular, industries and services, which are essential for the existence of the community and on which the continuity of the public administration depends, should be immune from dislocation by strikes and lock-outs and all disputes between the employees and employers (including governments) should be finally settled by arbitration and adjudication.”

### 3. THE FIVE YEAR LABOUR PROGRAMME

In September 1946, the Labour Department of the Central Government,<sup>6</sup> under the stewardship of the Central Labour

6. Until 1937 when the Government of India Act, 1935, came into force, the Central Government had authority to initiate legislation and administrative measures on labour matters for the whole of the British India. The Provincial Governments were responsible for the administration of the Central legislation and policies and could also undertake, with the approval of the Governor-General-in-Council, the enactment of Provincial labour laws. Under the Government of India Act, 1935, the legislative (and consequently executive) powers were divided among the Centre and the Provinces in accordance with three lists of subjects. Regulation of labour and safety in mines, oil fields and major ports and on the federal railways were mentioned in the Central List of Subjects. The Concurrent List included: factories; welfare and condition of labour; provident funds; workmen's compensation; trade unions; industrial and labour disputes and labour statistics. Both the Central legislature and the Provincial legislatures had power to make laws with respect to matters enumerated in the Concurrent List. If the Central legislature desired to enact legislation on any of the subjects of concurrent jurisdiction, it had to secure the prior approval of the Governor-General. The net effect of such a distribution of powers was that in regard to labour matters, as some others, the Provincial Governments had substantial powers and the task of the Centre was mostly confined to co-ordination of policies and setting of standards. With the promulgation of Rule 81-A of the Defence of India Rules during the Second World War, more powers were taken by the Central Government and the tendency towards central co-ordination of labour policies continued in the post-war period.

Minister, Shri Jagjivan Ram, formulated a comprehensive Five Year Labour Programme of legislative and administrative measures. The Programme was drawn up to remove the main deficiencies in Government's policies and measures, pointed out by the Royal Commission on Labour in 1931 and the Labour Investigation Committee in 1946. The Programme aimed at the evolution of a uniform co-ordinated labour policy for the entire country to promote industrial peace and social security and to ensure fair wages and satisfactory conditions of work; and it covered workers engaged in organised industries as well as workers employed in agriculture, commercial undertakings and unorganised industries. The Programme was discussed, and approved of, at conferences of Labour Ministers of Provinces and Princely Indian States and of representatives of the workers' and the employers' organisations.

With the Five Year Labour Programme, Shri Jagjivan Ram<sup>7</sup> initiated a new era of progressive labour legislation in India. The important labour measures, enacted during the period he was the Minister of Labour, were the Industrial Disputes Act, 1947; the Factories Act, 1948 (a comprehensive consolidating

The division of powers, in regard to labour matters, between the Centre and Provinces was continued mostly in the same form under the new Constitution of India which came into force on 26th January, 1950. The responsibility of the Ministry of Labour and Employment in respect of labour matters specified in the Union List is full and direct. The activities of the Ministry with regard to Concurrent labour subjects cover policy making, co-ordination, control and direction. Co-ordination is effected through a number of field organisations and offices which the Ministry maintains, primarily for looking after labour matters specified in the Union List.

7. Shri Jagjivan Ram joined National (Interim) Government in September 1946 as Minister of Labour and left the Labour portfolio and took over Communications on 1st April, 1952, on the reconstitution of the Government after the General Election of 1952.

As the Central Labour Minister he led the Government Delegation to the 30th Session of the International Labour Conference (1947) and was elected Chairman of the International Labour Conference for its 33rd Session held in 1950.

Before becoming the Union Minister of Labour in 1946, Shri Jagjivan Ram was Secretary, Harijan Sevak Sangh, in 1933; General Secretary, All-India Depressed Classes League in 1935, and its President in 1936 and from 1941 to 1948; Parliamentary Secretary, Government of Bihar, 1937-39; Secretary, Bihar Provincial Congress Committee, 1939-1946.

and amending statute); the Minimum Wages Act, 1948; the Employees' State Insurance Act, 1948; the Coal Mines Provident Fund and Bonus Scheme Act, 1948; the Plantations Labour Act, 1951; the Employees' Provident Funds Act, 1952; and the Indian Mines Act, 1952 (a consolidating enactment). About the progress of legislation under the Five Year Labour Programme, Shri Jagjivan Ram said as follows on 21st March, 1948, in a radio broadcast on national production crisis:

“...I have received many a friendly warning that I was going too fast, and that India was not ripe for what is described as radical labour legislation. I shall plead with my critics and tell them that we have not gone far enough in our plans. There is so much to do, and even more to undo, that for a long time to come, there will be no danger of overstepping the mark. ... We cannot resile from our pledge to the working class—the masses of our countrymen, who have suffered long in neglect. The country needs a clear and firm policy. We shall not rest content, unless we are able to assure to the working class a decent standard of living, and the honoured place which belongs to it.”

#### 4. TOWARDS COMPULSORY ADJUDICATION OF DISPUTES

##### *Industrial Disputes Act, 1947*

The Industrial Disputes Bill, introduced in the Central Legislative Assembly on 28th October, 1946, was the first legislative measure undertaken by the Government of India under the Five Year Labour Programme. The Bill embodied the essential principles of Rule 81-A of the Defence of India Rules (which empowered the Government to refer industrial disputes to adjudicators and to enforce their awards), as also the provisions of the Trade Disputes Act, 1929, concerning investigation and settlement of industrial disputes. The said Rule, due to lapse on 1st October, 1946, was kept in force by the Emergency Powers (Continuance) Ordinance, 1946.

The Bill was passed by the Assembly in March 1947 and it became a law on 1st April, 1947. The Act gave a new orientation to the conciliation and adjudication machinery. It introduced

two new institutions:—(1) Works Committee, and (2) Industrial Tribunals. Under the Act, the “appropriate” Governments were empowered to constitute Boards of Conciliation, Courts of Inquiry and Industrial Tribunals for the settlement of industrial disputes. The Industrial Tribunals were to consist of one or more members who were or had been High Court Judges or District Judges. Persons who were qualified for appointment as Judges of the High Courts could also be appointed in consultation with the High Court concerned. Reference of disputes to Boards, Courts or Tribunals was at the discretion of the Government concerned, but if both the parties to a dispute, either jointly or separately, applied for such a reference and if the appropriate Government were satisfied that the persons applying represented the majority of each party, or if a dispute related to a public utility service and the prescribed notice of strike or lock-out was given, it then became obligatory on Government to refer the dispute to a Board, Court or Tribunal. The Government, however, might not make such a reference if it were satisfied that the notice was not *bona fide*.

The Act prohibited strikes and lock-outs during the pendency of conciliation and adjudication proceedings, and during the period of operation of any settlement or award. A strike or lock-out in any public utility service was declared illegal unless commenced after due notice, etc.

#### *Industrial Relations Policy of the Interim Government*

Shri Jagjivan Ram, Labour Minister, explained in the Central Legislative Assembly, on 1st November, 1946, the Government’s policy underlying the Industrial Disputes Bill, 1946, as follows:

“...Trade disputes are in reality a recrudescence of the economic warfare between the capital and the labour and in this warfare the community at large is no less affected than the employer and workmen engaged in the industry. ...Government being responsible for the maintenance of services and supplies essential to the health, safety and welfare of the community and the maintenance of national economy, it becomes imperative for Government to intervene in industrial disputes, especially where in consequence any severe hardship is entailed on the community.

“...The principle underlying compulsory arbitration is thus clear and unimpeachable. ...Where public interests are jeopardized, I maintain that it is incumbent upon Government to intervene with a view to securing the readjustment of relations between the employers and the workmen, if possible, by private negotiation and conciliation, and if necessary by compulsory adjudication.

“I must make it clear that in providing for compulsory adjudication our intention is not to oust or in any way minimise the importance of the methods of voluntary negotiation and conciliation in the settlement of disputes. Industrial disputes being disputes on interests rather than on rights, I need hardly stress that voluntary negotiation will offer more effective and lasting solution than conciliation or arbitration. ...It is only where conciliation has no reasonable chance of success, that disputes will be referred to adjudication as being a necessary expedient for securing readjustment of industrial relations.”

Speaking again on January 10th, 1947, Shri Jagjivan Ram said:

“The most vehement objection that has been raised by the workers’ representatives in this House was on the point of compulsory adjudication...

“...if a plebiscite were to be made on this point by referring it to the working classes at large, I am sure an overwhelming majority of the working classes will welcome this measure because it provides a machinery and a remedy which will curtail the prolonged agony to which they are put when a strike is prolonged due to the obstinacy or false sense of prestige of some labour leaders.”

#### *The Attitude of the Workers’ Organisations Towards Compulsory Adjudication*

The principle of compulsory arbitration in peace time, accompanied by prohibition of strikes, as embodied in the Bill, was strongly resented and opposed by the A.I.T.U.C. Its General Secretary, Shri N. M. Joshi, pointed out, during discussions on the

Bill in the Central Legislature, on 10th February, 1947, that the Bill contained an element of slavery as it would compel the workers to remain tied to their jobs against their will. He explained:

“...The working classes consider arbitration or adjudication as a leap in the dark. You may take the grievances of the workers before a tribunal. They do not know what decision the tribunal will give and it is for that reason that the working classes always prefer a voluntary agreement, voluntarily entered into, the effect of which they know very well and the responsibility for which they also take, knowing all the effects.”

Similar views were expressed by Shri S. Guruswamy (All-India Railwaymen's Federation—an independent federation of unions, set up in 1925) and Miss Maniben Kara (Indian Federation of Labour), the other labour representatives in the Legislative Assembly. Miss Kara characterised the Bill as a “repressive measure” which was not only against the interest of the working class but also against all persons who stood for the democratic right of citizenship. The workers' organisations, she said, were not against machinery for conciliation or arbitration but they wanted it to be voluntary and not compulsory. She feared that the new law would result in industrial unrest, strikes and hardships.

The opposition of the workers' organisations to the principles of Government's intervention in disputes and compulsory adjudication was voiced again at the Eighth Session of the Indian Labour Conference,<sup>8</sup> (New Delhi; April 21-22, 1947). Shri Rajani Mukerji (Indian Federation of Labour) stated that it should be recorded that the Industrial Trade Disputes Act, 1947, had been

8. The Government of India has since 1942 evolved and perfected a non-statutory tripartite Labour Consultative Machinery, which consists of the Indian Labour Conference, the Standing Labour Committee and the Industrial Committees for selected industries. The employers' and workers' organisations, State Governments and the Central Government are represented in these tripartite bodies. They provide a forum for arriving at a broad agreement about the general principles to underlie the Central Government's policies on different labour matters and for discussion of the deficiencies in the policies so formulated. The recommendations of the tripartite machinery are generally accepted and implemented by the Government. The Labour Ministers' Conference, though not tripartite in character, is closely associated with the consultative machinery.

enacted against the wishes of the workers' organisations in the country. Shri Dinker Desai (A.I.T.U.C.) remarked that the restrictive provisions concerning strikes, etc. had been incorporated in the Act despite the workers' opposition.

*Provincial Industrial Relations Laws*

In the light of the experience with the working of the Bombay Industrial Disputes Act of 1938 during the past eight years and specially during the Second World War, a new and more comprehensive Act—The Bombay Industrial Relations Act, 1946—was enacted on the initiative of Shri Gulzari Lal Nanda, the then Provincial Labour Minister. (It received the assent of the Governor-General in April 1947.) The Act of 1946 cut new ground in several directions. It completed the labour judiciary by providing for the establishment of Labour Courts. Powers of the Government to make arbitration compulsory were also increased. An amending Act in 1948 empowered the Provincial Government to set up wage boards, and authorised any registered union which was the representative of the employees, and whose rules provided that it would neither sanction nor resort to strike unless the available statutory remedies had been exhausted, to apply direct to the Industrial Court for arbitration. By another amending Act in 1949 a "representative union" was made the sole bargaining agent in all proceedings where it was entitled to appear.

The Government of Central Provinces and Berar enacted in May 1947 the Central Provinces and Berar Industrial Disputes Act, modelled on the Bombay Industrial Relations Act but with provisions less comprehensive in scope. The Act empowered the Provincial Government to set up District and Provincial Industrial Courts to settle industrial disputes and to deal with such other industrial matters as might be referred to them under the Act.

The U.P. Industrial Disputes Act, 1947, was passed in December 1947. It conferred wide power on the Provincial Government with regard to issue of orders (a) for prohibiting strikes or lock-outs generally or in connection with any industrial dispute; (b) for appointing industrial courts; (c) for referring any industrial dispute for conciliation or adjudication; and (d) for regulating or controlling the working of any public utility

service.

[The Industrial Disputes (U.P. Amendment) Act, 1951, provided that any person who "is or has been a Magistrate of the First Class for a period exceeding two years" or "is a person possessing more than two years' practical experience of adjudicating or settling industrial disputes" would be eligible for appointment as the Chairman of an industrial tribunal. Under this amendment, persons without any judicial experience became eligible for appointment to the tribunals and the U.P. Government appointed some conciliation officers as adjudicators.]

### 5. INDUSTRIAL TRUCE (1947-50)

With the cessation of hostilities in 1945 and the consequent fall in demand for labour there was an unprecedent increase in industrial strife, in particular, in cotton, woollen, silk and engineering industries. The number of man-days lost due to industrial stoppages rose from about 4.1 million in 1945 to about 12.7 million in 1946 and to 16.6 million in 1947; and the number of industrial disputes increased from 820 in 1945 to 1629 in 1946 and 1811 in 1947. Industrial production dropped substantially from the war-time peak of 1944. In order to meet the situation, the Industries and Supplies Minister of the Government of India convened in December 1947 a tripartite conference of the representatives of the Central and Provincial Governments and of the employers' and workers' organisations. This conference, which came to be known as the Industries Conference, unanimously passed a Resolution which stated that increase in industrial production, so vital to the economy of the country, could not be achieved without the fullest co-operation between labour and management and stable and friendly relations between them. The Resolution added that the system of remuneration to capital as well as labour must be so devised that while in the interests of the consumers and the primary producers excessive profits should be prevented by suitable measures of taxation and otherwise, both would share the product of their common effort after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking. For attaining these objectives, the Resolution,

*inter alia*, recommended:

- (a) "The fullest use should be made of statutory and other machinery for the resolution of industrial disputes in a just and peaceful manner; where it does not exist, it should be created without delay. Such machinery should as far as possible be uniform throughout India.
- (b) "The establishment of machinery, Central, Regional and Functional, for the study and determination of fair wages and conditions of labour, and fair remuneration for capital, and methods for the association of labour in all matters concerning industrial production, such as the formation of Central, Regional and Unit Production Committees."

The Conference called upon labour and management to agree to maintain industrial peace and to abstain from lock-outs, strikes or slowing down of production during the next 3 years.

*The Resolution on Industrial Policy (April 1948)*

The Resolution on Industrial Policy, issued by the Government of India on 6th April, 1948, stated that the Government of India had accepted the recommendation, contained in the Resolution on Industrial Truce adopted by the Industries Conference in December 1947, with regard to both labour and capital sharing "the product of their common effort,..." and was of the view that labour's share of the profits should be on a sliding scale normally varying with production.

The Resolution added that the Government proposed to establish machinery to advise on fair wages, fair remuneration for capital and conditions of labour, and also to take steps to associate labour in all matters concerning industrial production. This machinery was to consist of a tripartite Central Advisory Council of Labour at the Central level, tripartite Provincial Advisory Boards and Industrial Committees at the Provincial level and bipartite Works Committee and Production Committee at the plant level. The Resolution also said that the industrial relations machinery, both at the Centre and in the Provinces, was being strengthened, and permanent industrial tribunals were being established for dealing with major disputes.

In pursuance of the Resolution on Industrial Policy, the Government of India set up a tripartite Committee on Profit-Sharing in May 1948. The representatives of workers on the Committee were: Shri Khandubhai K. Desai (I.N.T.U.C.), Shri Asoka Mehta (H.M.S.), and Shri V. B. Karnik (Indian Federation of Labour).<sup>9</sup> The Committee was not unanimous in its recommendations. It, however, came to the conclusion that it was not possible to relate labour's share in profits to changes in production except in an arbitrary manner. It suggested an experimental scheme of profit-sharing in a few well-established industries, with labour's share as 50 per cent of the surplus profits, which were defined as net profits minus 10 per cent for reserves, minus 6 per cent on capital employed. The recommendations of the Profit-Sharing Committee were considered in July 1949 by the Central Advisory Council of Labour (set up in September 1948). The Council did not arrive at any agreed decision.

Shri Khandubhai K. Desai (I.N.T.U.C.), in a note of dissent, stated that a fair wage to labour must be the first charge on industrial production, whether profits were earned or not, as a worker could not be expected to work "with health and efficiency" without a fair wage. Though generally agreeing with the majority recommendation that profit-sharing should normally be unit-wise, Shri Desai felt that in cotton textiles, jute, sugar and like industries where undertakings were located in large numbers in definite localities or areas, it would be desirable to have profit-sharing on industry-cum-area basis. Referring to the annual profit-bonus schemes already operating satisfactorily in industries like cotton textiles for the last many years, Shri Desai warned that it would be risky, in such cases, to change the existing practice of distribution of profit-bonus on industry-cum-region basis. He added that industry-cum-region-wise profit-sharing would help build up a sense of collective responsibility and group solidarity among the workers of an industry.

Shri Desai also recommended that 10 per cent of the net profits, after allowing for  $7\frac{1}{2}$  per cent as managing agency remuneration and depreciation according to income-tax law, should be considered as adequate provision for reserves. This

9. The employers were represented by Shri A.D. Shroff, Shri S.P. Jain and Shri Biren Mukerjee. Prof. Radhakamal Mukerjee was also a member.

provision of reserves should be compulsory and should form a part of fair return to capital while computing the surplus share of labour for purposes of profit-sharing.

A Committee was appointed in November 1948 by the Central Advisory Council of Labour to consider the question of fair wages. The Committee, known as Fair Wages Committee, defined the minimum wage as one which would provide not merely for the bare sustenance of life but also for the preservation of the efficiency of the worker by providing for a measure of education, medical requirements and amenities. A fair wage was defined as higher than a minimum but less than a living wage. The Committee recommended that a minimum wage must be available to workers under all circumstances irrespective of the capacity of the industry to pay; but a fair wage would depend upon considerations such as paying capacity and factors such as the productivity of labour, the existing level of the national income, the place of the industry in the national economy, the effect on the community in general and on the industry in particular, etc. The Committee concluded that it was not possible to assign any definite weight to any of these factors. The report of the Fair Wages Committee was unanimously adopted by the Central Advisory Council of Labour on 29th July, 1949.

\* \* \*

After the Industrial Truce, the number of disputes decreased from 1811 in 1947 to 1259 in 1948 and 920 in 1949, and the man-days lost declined from 16.6 million in 1947 to 7.8 million in 1948 and 6.6 million in 1949.

The improvement in the labour relations situation was due to some other factors, in addition to the Industrial Truce. With the achievement of Independence in 1947 and the installation of popular Government at the Centre and in the Provinces, the demands of the workers for higher wages began to be considered more sympathetically than before, and the Central Government itself took the initiative in implementing the recommendations of the Central Pay Commission, which meant substantial wage increases to its employees. This was followed by a large number of wage revisions effected partly through direct negotiations and

partly through the intervention of Government conciliators, adjudicators, tribunals and courts.

By the end of 1949, the wage structure in the important centres of major industries had been placed on a somewhat scientific basis as a result of awards of industrial tribunals. The average money earnings of factory workers (drawing less than Rs. 200 p.m.) were Rs. 737.0 in 1947; Rs. 883.0 in 1948; and Rs. 985.8 in 1949. The index of money earnings, with base at 1947, was 120.0 in 1948 and 134.4 in 1949; and the index of real earnings stood at 107.4 and 116.9 respectively.

\* \* \*

The new Constitution of India which came into force on 26th January, 1950, *inter alia*, provided "The State shall endeavour to secure by suitable legislation or economic organisation, or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities..." (Article 43)

The Union Ministry of Labour assumed responsibility with effect from 1st April, 1950, for the administration of Central labour laws in Part B States with regard to undertakings falling within the Centre's jurisdiction.

## 6. NEW NATIONAL ORGANISATIONS OF WORKERS

### *The Emergence of the I.N.T.U.C.*

The leaders of the Indian National Congress had for a long time felt the need for organising trade unions on Gandhian lines. The Congress Working Committee in its Resolution of August 1946 had advised the Congressmen, engaged in trade union activities, to follow the lead given from time to time by the Hindustan Mazdoor Sevak Sangh (H.M.S.S.) which had been established in 1938 in pursuance of the recommendations of the Labour Sub-Committee of the Gandhi Seva Sangh. A conference of Congressmen engaged in labour work and trade unionists of similar views, representing over 200 unions and 0.7 million workers, was convened in Delhi in May 1947 by Shri Gulzari Lal Nanda, who was formerly the General Secretary

of the Textile Labour Association, Ahmedabad, and at that time Minister of Labour and Housing, Bombay Province. The invitations to the Conference were issued both by the All-India Congress Committee and the Hindustan Mazdoor Sevak Sangh. Inaugurating the Conference, Shri Nanda said:

“...the All-India Trade Union Congress has at its annual session passed a resolution condemning the Bombay Industrial Relations Act and the Industrial Disputes Act mainly on the ground that the enactments provide for adjudication and empower Governments to refer disputes to the arbitration of a tribunal or the Industrial Court. This resolution of the (All-India) Trade Union Congress runs directly counter to the declared policy of the Congress in this connection as stated by the Working Committee on the 13th August 1946.”

Sardar Vallabhbhai Patel, who was then the president of the Central Board of the H.M.S.S. and Deputy Prime Minister and Minister of Home Affairs in the Government of India, in his presidential address to the Conference, said:

“The workers of India are only a section of the people and not a class apart. ...In organising them and seeking the redress of their grievances ways and means have to be evolved in consonance with our own conditions. ...What is required is an indigenous movement having its roots in the Indian soil. Such a movement has for long been in existence and has attained a remarkable degree of success through a number of unions in several centres. But generally speaking, these unions have held themselves aloof from the A.I.T.U.C. Today they are coming together to form a new national organisation.”

The Conference decided to set up a new organisation of workers—the Indian National Trade Union Congress with, among others, the following aims: “(a) establishment of an order of society which fosters the growth of human personality in all its aspects; progressive elimination of social, political or economic exploitation and inequality and the profit motive in the economic activity; national ownership and control of industry in suitable form to realise the aforesaid objectives; full employment and maximum utilisation of man power and other resources; increasing association of the workers in the administration

of industry and their full participation in its control"; and (b) "(i) To establish just industrial relations; (ii) to secure redress of grievances, without stoppages of work, by means of negotiation and conciliation and failing these, by arbitration or adjudication; (iii) where adjudication is not applied and settlement of disputes by arbitration is not available for the redress of grievances, to facilitate recourse, on the part of the workers, to other legitimate methods including strikes or any suitable form of satyagraha."

The constitution of the I.N.T.U.C. further provides that the "means to be adopted for the furtherance of the objects...shall be peaceful and consistent with truth."

The I.N.T.U.C., at its First Session (May 1947), adopted a Resolution recommending the appointment of a committee of experts charged with the responsibility of fixing wages on a fair and equitable basis, laying down the basis for a fair return on capital and the provision of adequate reserves, and evolving a scheme whereby labour would be assured of a just share in the profits of the industry.

For purposes of representation at the international meetings of the I.L.O., the Government of India conducted an enquiry in 1948 into the membership of all-India organisations of workers and it was found that the A.I.T.U.C. had 815,011 members, and the I.N.T.U.C., 973,179. The Government of India accordingly accepted the I.N.T.U.C. as the most representative organisation of the workers for participation in the International Labour Conference at San Francisco in 1948.

#### *Hind Mazdoor Sabha*

In December 1948 was founded another organisation of workers—the Hind Mazdoor Sabha—by the leaders of the Congress Socialist Party, who were opposed to compulsory arbitration and government-sponsored trade unionism and had separated from the Indian National Congress in 1934 and had set up the Hind Mazdoor Panchayat. The Indian Federation of Labour merged into the H.M.S. The basic philosophy of the new organisation was the independence of trade unions from the Government, employers and political parties. The objects of the H.M.S. include: "participation of the workers in the control and regulation of industry; nationalisation of key industries and

banking; effective recognition of the right to bargain collectively; a living wage for all workers and a guarantee of the right to work; adequate social security measures; reasonable hours of work, adequate spare time and holidays with pay; free compulsory elementary and adult education, and facilities for vocational training; provision for child welfare and maternity benefit and a close working relationship with the co-operative movement.”<sup>10</sup>

Both the I.N.T.U.C. and the H.M.S. joined the International Confederation of Free Trade Unions when it was set up in 1949 as the international organisation of free and democratic trade unions.

#### *United Trades Union Congress*

The United Trades Union Congress was formed in April-May 1949 by a group of leaders ranging in their views between the Communists and Socialists who were not satisfied with the policies of the H.M.S. This new organisation was set up to conduct union activities and build up a central platform for labour on the basis of the broadest possible trade union unity, free from sectarian party politics.

The U.T.U.C. aims at: (i) establishment of a socialist society and of a workers' and peasants' State in India; (ii) nationalisation and socialisation of the means of production, distribution and exchange; (iii) safeguarding and promoting the interests, rights and privileges of the workers in all matters, social, cultural, economic and political; and (iv) securing and safeguarding the workers' freedom of speech, freedom of press, freedom of association, freedom of assembly, right to strike, right to work or maintenance, and the right to social security.

The U.T.U.C. has “the preponderance and predominance of trade-union leaders” drawn from the Revolutionary Socialist Party (Marxist-left).

10. The Working Committee of the H.M.S. adopted in June 1956 the following principles for trade union unity: unreserved acceptance and rigid adherence to the principles and methods of democracy in trade union activities; freedom from interference by government or political parties; and freedom for workers to select a union of their own choice by secret ballot.

**DECISION ONE :**

**THE DECISION TO ESTABLISH THE  
LABOUR APPELLATE TRIBUNAL**

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## 1. DIVERGENT AND CONFLICTING AWARDS OF INDUSTRIAL TRIBUNALS

### *Industrial Awards 1947-49*

THE PROVISIONS of the Industrial Disputes Act, 1947, were utilised by the Government of India and Provincial Governments to set up, as the need arose, industrial tribunals to adjudicate upon industrial disputes. The number of adjudications under the Act increased from 114 in 1947 to 452 in 1948 and 926 in 1949. The Act provided that on receipt of the award of the industrial tribunal, the appropriate Government "shall, by order in writing, declare the award to be binding" unless the Government considered that it would be inexpedient on grounds of public interest to give effect to it in whole or part; and in the latter case the Government must lay it before the appropriate legislature at the first available opportunity with a statement of reasons for not enforcing it. There was thus no provision for any review or appeal. The Act also laid down that the award would remain in operation for such period, not exceeding one year, as might be fixed by the appropriate Government.

Two major issues, which engaged the attention of the industrial tribunals during the years 1947 and 1948, were: (1) the fixation of basic wages in cotton textile, jute, engineering and other industries, and (2) the grant of bonus to the workers from surplus profits. The industrial tribunals gave awards after taking into account not only the contractual relations between the parties but also considerations of equity and justice, the economic conditions of the concern and the industry, etc. As there were generally no clear-cut guiding principles available to the tribunals on these matters, there were wide divergencies in the awards, particularly on questions of bonus and profit-sharing.

The Industrial Court, Bombay, in an award<sup>1</sup> given in October 1945, had held that although bonus was an *ex gratia* payment and could not be legally demanded, it could still be the subject

1. In the dispute between Textile Labour Association, Ahmedabad, and The Ahmedabad Millowners' Association (Labour Gazette, Bombay, October 1945, p. 124).

of an industrial dispute, being in the nature of a reward. Though in some disputes in the U.P. in 1946 the adjudicators took the juristic view that the demand for bonus could be sustained only if there was an explicit or implicit contract between the parties, the Industrial Court, Bombay, in an award<sup>2</sup> in May 1947 opined that bonus was a justifiable industrial claim when wages fell short of living standards and the industry had made huge profits which were partly due to the workers' contribution towards increased production. This view was shared by the Industrial Tribunal, appointed by the Government of West Bengal in October 1947, in the disputes between *The Employers of 36 Cotton Mills in West Bengal v. Their Employees*.<sup>3</sup> The Tribunal ruled that the demand for bonus, though not based on legal right arising out of contract, express or implied, had to be decided on broad principles of equity and justice. It added that the demand for bonus was "not for any payment gratis but price of labour". In June 1947 in the dispute between *Cawnpore Electric Supply Corporation Ltd., Kanpur* and its employees, when the concern was being taken over by the Government of U.P., the adjudicator (Conciliation Officer, U.P.) held that the employees were entitled to 50% of the reserves, which had been created from profits to which the labour had also contributed.<sup>4</sup> (Previously the Corporation was paying annual bonus, linked to the annual dividend.) On this point, a diametrically opposite judgement was given in November 1947 in the dispute between *Bombay Electric Supply and Tramways Company, Ltd., Bombay*, (which was being taken over by Bombay Municipal Corporation), and its employees. The Industrial Tribunal (Justice H.V. Divatia) turned down, on legal grounds, the demand of the workers for a share in the total net assets of the company, including its various reserve funds. The Tribunal held that workers were not really partners of the share-holders and the claim to bonus should be settled out of the profits of a particular year and once it was so settled the employees had no further claims

2. In the dispute between the Millowners' Association, Bombay, and the employees of the member mills (I.C.R., 1946-47, 386).
3. West Bengal Government Order No. 2956 Lab. dated 21-8-1948.
4. (1950 LLJ 379). The award of the adjudicator was invalidated by a judgement of the Allahabad High Court delivered on 30th March, 1950. Justice B.B. Prasad was a member of the Bench which heard the case; he was, later on, a member of the Bombay Bench of the L.A.T.

over the reserves set apart for future contingencies.<sup>5</sup>

In the case of *Sheo Daal Mills, Balrampur Daal Mills* and *Shivnarain Daal Mills, Balrampur*, the adjudicator awarded a bonus of 25% of the profits accumulated by the concerns during the previous years 1944 to 1947.<sup>6</sup> In the dispute between *169 Printing Presses in Calcutta and Howrah* and their employees, the adjudicator ordered in May 1948 that the workers should be given a profit-sharing bonus equal to 20% of net profits after deducting a return at the bank rates on the capital outlay of a press and government charges, or 3 months' wages, whichever was less.<sup>7</sup> The Industrial Tribunal appointed to adjudicate upon the dispute in *Mazgaon Docks Ltd.*, decided in June 1948 that "the claim of workmen for bonus, so long as living wage standard has not been attained, will remain justifiable and it must have precedence over items of costs such as the managing agent's remuneration and commission, taxation provision and all reserves other than depreciation and general reserves".<sup>8</sup> In an award made in November 1948, in the dispute between *Shahjehanpur Electric Supply Company* and its employees, the adjudicator awarded 25% of the net profits as bonus to the workers even though the Company had not declared any dividend and had suffered a loss since its incorporation. In the dispute between the employers and employees of *Taj Tanneries, Agra*, the adjudicator ordered in May 1948 the payment of bonus on the ground that "bonus has been accepted as a legitimate claim of the workers in all the industries by way of profit-sharing".<sup>9</sup> In the dispute between the managements of motor transport services in Madras Province and their workmen, the Industrial Tribunal observed, "The question of bonus has to be examined in the light of the changed outlook of employer-worker relationship. Equity requires that the profits of the joint efforts should be shared by both".<sup>10</sup>

5. I.C.R., 1946-47, 640.
6. *Bonus Awards*, All-India Organisation of Industrial Employers, New Delhi, 1950, p. 7.
7. Award enforced under West Bengal Government Order No. 1487 Lab. dated 11th May, 1948.
8. Bombay Government Gazette Extraordinary, dated 17th June, 1948.
9. U.P. Government Order No. 751 (TD) iii/xviii-30 (ST)/48, dated May 26, 1948.
10. Madras Government Order No. 2169—Development, dated 29th April, 1948.

In the dispute between the *Millowners' Association, Bombay*, 80 textile mills in Bombay city and their employees the Industrial Court observed in May 1949 that the demand for bonus "derives its strength, where the living wage standard has not been reached, from a feeling of deficiency in the means to attain the necessary standard of living. Therefore, bonus in such circumstances no doubt serves as a temporary satisfaction, wholly or in part, of his (the worker's) need... Labour as well as the working capital employed in the industry both contribute to the profit made and both are, therefore, entitled to claim a legitimate return out of the profit; and such legitimate return, so far as labour is concerned, must be based on the living wage standard. It is, however, to be remembered that a claim to bonus might be admissible even if the living wage standard were completely attained. It may, therefore, be stated that so long as the living wage standard has not been attained the bonus partakes primarily of the character of the satisfaction, often partial and temporary, of the deficiency in the legitimate income of the average worker in an industry, and that once such income has been attained it would also partake of the character of profit-sharing. Owing to this dual character of bonus it would be a mistake to regard a demand for bonus as a demand for profit-sharing pure and simple. Even if it be held, as the Committee on Profit-Sharing have held that profit-sharing on a fifty-fifty basis would be equitable, it would be proper, in our opinion, when the living wage standard has not been reached, for labour to demand even a greater share after the gross profits have been reduced by depreciation, reasonable reserves and dividend and suitable provision for taxation".<sup>11</sup>

11. Bombay Government Gazette Extraordinary, dated 5th May, 1949.

The position regarding the award of bonus prior to the establishment of the L.A.T. was summed up by the I.N.T.U.C. as follows: "In the early days of bonus adjudication, Tribunals were not following any set formula for adjudicating bonus claims. In those days, Tribunals were mostly guided by a desire to ensure social justice, based on voluntary agreements, practices and traditions and common sense. Generally a percentage of the profits was awarded as bonus by a rough and ready method. There had been cases where bonus was awarded, or agreed to be paid, on the industry-cum-region basis, without taking into account the performance of individual units in the industry in the region. There had also been cases where a fixed percentage of the total salary was agreed to be paid as bonus in all industries in a particular

In the awards of the different industrial tribunals no fixed principles were discernible about the determination of the quantum of bonus, nor any uniformity about qualifying conditions. While the financial conditions and the net profits of the concern or industry were taken into account, there was no uniformity about the definition of "profits".

Other matters in which there was no uniformity in the decisions of industrial tribunals related to payment for night shifts and compensation for retrenchment, compensation for involuntary unemployment and on reinstatement after wrongful discharge. In some cases where the industrial tribunals directed the creation of provident funds on a contributory basis there was divergence of opinion about the applicability of the decision to the units of the concern in other Provinces or parts of the country, which were not a party to the dispute. In this regard, as also in the matter of grant of bonus and other benefits, the undertakings which had branches in more than one Province, particularly those employing transferable staff, were faced with serious difficulties. The workers in other branches, which were not a party to the dispute, would feel discontented and clamour for the more favourable conditions conceded by the industrial tribunals for particular unit or units.<sup>12</sup>

region, regardless of the results of any particular industry in the region. There had also been cases where bonus was linked by awards of Tribunals to the percentage of dividend paid to the shareholders" or "...where bonus awarded was based on production, regardless of the trading results, even though more production need not necessarily mean more profits. In spite of such widely varying basis and methods adopted by Tribunals and parties to settle bonus disputes in the early days, the position was on the whole satisfactory." (*Replies to the Bonus Commission Questionnaire*, Indian National Trade Union Congress, New Delhi, 1962, p. 5.)

12. To meet such difficulties created by the piecemeal adjudication of disputes in banking and insurance companies having branches in more than one Province, the Central Government promulgated The Industrial Disputes (Banking and Insurance Companies) Ordinance in April 1949, which was replaced in December 1949 by an Act. Banking and insurance companies were included in the list of undertakings for which the Central Government alone was competent to set up Conciliation Boards, Labour Courts or Industrial Tribunals.

In June 1949, the Governor-General promulgated another Ordinance, called The Industrial Tribunals Payment of Bonus (National Savings Certificates) Ordinance, 1949. This Ordinance was largely

## 2. THE EMPLOYERS PLEAD FOR AN APPELLATE BODY

The awards of industrial tribunals about bonus, etc. which were unfavourable to the employers created serious misgivings and fears in their minds about the fairness of the adjudication machinery which did not provide for appeals against initial judgements in industrial disputes. The Indian Chamber of Commerce,<sup>13</sup> Calcutta, addressed a communication in August 1947

the result of the recommendations made by the Industrial Court, Bombay, in its award relating to the payment of bonus to the employees of the cotton mills in the Bombay City. The Court, while awarding 4½ months' basic wages as bonus for the year 1948 to employees, had felt that in view of the large sum (Rs. 4.32 crores) involved, it should not be paid in one lump sum. It had urged the legislature to consider whether it would be feasible in suitable cases for the Industrial Court to order that part of the amount should be paid in the form of National Savings Certificates.

13. The Indian Chamber of Commerce—an affiliate of the Federation of the Indian Chambers of Commerce and Industry is the largest of the business chambers in West Bengal. Its member associations represent sugar, chemicals, engineering, non-ferrous metals, paper, paint, automobiles, cycles, etc.

Established in 1927 with the object of promoting Indian business and securing organized action on all subjects of interest to the business community, the Federation of the Indian Chambers of Commerce and Industry owes its origin to the annual Industrial Conference which used to be held along with the annual sessions of the Indian National Congress. Today it has on its roll 173 chambers of commerce and trade and industrial associations and 369 Associate Members, comprising leading business houses in the country. Many of the constituents of the Federation are themselves large organizations with membership running into thousands. The Federation is represented on almost all important consultative bodies of Government, which include the Central Advisory Council of Industries, the Import and Export Advisory Councils, Customs Advisory Committees at Ports, Commodity Committees like Central Oilseeds Committee, Tobacco Committee, Capital Issues Advisory Committee and the Indian Council of Agricultural Research. Apart from the Indian Chamber of Commerce, Calcutta, the important constituent members of the Federation are the Indian Merchants Chamber, Bombay; and the Southern India Chamber of Commerce, Madras.

The other two national business federations are the All-India Manufacturers' Organization and the Associated Chambers of Commerce of India, Calcutta (with branches in Bombay, Madras and Calcutta). The Bengal Chamber of Commerce is one of the largest and dominant affiliate of the Associated Chambers of Commerce of India.

to the Central Minister of Labour, stressing the necessity of permitting appeals to the High Courts against the perverse decisions of industrial tribunals. This demand was repeated by the Indian Chamber of Commerce and the Associated Chambers of Commerce, Calcutta, in August 1948.

The Indian Chamber of Commerce in its communication to the Government of India referred to the awards of the industrial tribunals in the disputes relating to *169 Printing Presses in Calcutta and Howrah* and *Cawnpore Electric Supply Corporation Ltd.*, and characterised the award by the adjudicator of 50% of the reserves of the concern in the latter dispute as "an unjustifiable inroad into the accumulated savings of the shareholders of the Corporation". The Chamber pointed out that this award had a disturbing effect on industry inasmuch as a number of companies were being frightened into capitalising their assets. Emphasising the need for the setting up of a central appellate body, it added that provincial appellate courts, if established, "will lead to varying judgements without giving any finality or uniformity in regard to matters under dispute".

The Federation of Indian Chambers of Commerce and Industry, at its annual session held on 15th July, 1948, urged the Government of India to enunciate a uniform labour policy for the whole of the country in clear and unequivocal terms so as to remove the doubts and uncertainties in the minds of the workers and employers in regard to the future intentions of the Government. The Federation invited the attention of the Government to the unsatisfactory working of the Industrial Disputes Act, 1947, under which adjudicators with inadequate knowledge and understanding of the conditions of the nature of the industry had often been appointed and had given diverse judgements and laid down novel and dangerous precedents in some of their awards. The Federation, therefore, recommended that the Act should be suitably amended so as to ensure that the adjudicators were chosen from amongst persons of integrity and ability, having sufficiently long judicial experience and a status not below that of a High Court judge. They should further be assisted by assessors representing the workers and the employers.

## 3. THE MINISTRY OF LABOUR REVIEWS THE QUESTION

As a result of the representations received from the employers' organisations and otherwise, the Ministry of Labour considered, in July 1948, the question of providing for appeals against the decisions of industrial tribunals. It noted that there was no suitable machinery to co-ordinate the activities of the several tribunals set up by the Central and Provincial Governments, and that the widely divergent decisions given by the tribunals on important issues were creating difficulties, particularly in industrial undertakings having branches in several Provinces, with transferable employees. The Ministry thought that the High Courts would not be a proper forum for hearing of appeals. It was true that wrong and perverse decisions would be set right by the normal law courts but what was more necessary was greater uniformity in the terms of awards of tribunals. This, the Ministry felt, could be secured only by having a central labour appellate tribunal which, being a special court, would have a better appreciation of industrial and labour problems than a regular High Court. The Ministry accordingly addressed the Provincial Governments to elicit their views on its proposal for the establishment of a central labour appellate body.

*Views of Provincial Governments*

The replies of the Provincial Governments revealed that they were divided in their opinion about the creation of the labour appellate tribunal. The opposition mainly came from the Governments of U.P. and C.P. and Berar. The U.P. Government stated that it had embarked upon a new experiment in industrial democracy under the Provincial Act, which provided for Conciliation Boards and Industrial Courts, for fostering the growth of trade unionism and making the employers more responsive to the needs of social justice, and that this experiment should be given a fair trial before going in for a new set-up. The U.P. Government also opposed the proposal for the appellate tribunal, on the ground that the object of speedy settlement of industrial disputes would be defeated and further that it would be an encroachment upon its provincial autonomy. The Government of C.P. and Berar was of the view that an appellate tribunal might cause delay in the implementation of awards

and would defeat the very objective of speedy settlement of industrial disputes. The Government of Madras considered that the Provincial High Courts which were best acquainted with local conditions should be made the appellate tribunals. The Government of Bombay suggested one appellate tribunal for each Province, with a Central Revisional Tribunal.

It was also contended, by some Provincial Governments, that a central appellate body would not be as easily accessible as a provincial one and that it would increase the costs of adjudication. The aspects of delays and increased expense were important inasmuch as the decisions of the industrial tribunals, though binding, were initially valid for a period of one year only.

The different views of the Provincial Governments were duly considered by the Government of India. It noted that all Provinces (except Bombay, U.P., and C.P. and Berar which had their own industrial relations laws) had made a wide use of the provisions of the Central Act to set up a large number of *ad hoc* industrial tribunals. It also found that there was enough work for a wholetime specialist court. As the complaints of lack of uniformity in the decisions of industrial tribunals had become persistent and acute, there were many matters, for instance, bonus, retrenchment, etc., which if wrongly decided or decided with reference to conditions prevailing in one Province only, would have serious repercussions in other Provinces even in well-established undertakings. Again, decisions by industrial tribunals on issues like provident fund and gratuity tended to have their impact throughout the country. The Ministry, therefore, felt that a greater degree of uniformity and consistency could be achieved through the establishment of an appellate body. The Government accordingly tentatively decided: (a) that there should be a central statutory tribunal independent of Government, consisting of three to five judges, which would hear appeals from or review the decisions of all tribunals whether they were set up by the Centre or the Provinces; (b) that these judges would have original jurisdiction and each would be allotted a particular region; and (c) that all major disputes in that region would be referred to the judge of the central tribunal in charge of that region.

*Statement of October 5, 1948*

A public announcement of this decision was made by Government as a part of the Statement, issued on October 5, 1948, on "Measures to Combat Inflation". The Statement noted: "The Central Government are convinced of the imperative need for uniformity in legislation regarding industrial disputes and its applications. Divergent policy and uncoordinated action in this matter can result in embarrassing repercussions on the economy of the country at the present juncture... The yintend to take measures by legislation and otherwise to ensure that uniform principles will be adopted under the overall control of the Central Government, in the reference of disputes to adjudication and the provision for the review of awards by a statutory authority".

*The Employers Press for Uniformity in Industrial Awards*

The President of the Federation of Indian Chambers of Commerce and Industry, Shri Lalji Mehrotra, addressed a letter in November 1948 to the Central Ministry of Labour, pointing out that the powers under the law for referring the cases to conciliation and arbitration were nowhere well defined, and it would seem that any difference of opinion between the workers and employers could be a subject of reference. It would also seem, and it had been proved by experience, that there were no limits on the powers of adjudicating authorities to award benefits to the workers, with the result that there had been created in the minds of employers in the country a justifiable apprehension not only as regards the sanctity of contracts between themselves and their employees but also in regard to the inviolability of law of equity and common law. In fact, such a feeling of apprehension had gone so far that it had become one of the contributory factors for the slump in the investment market and even for frightening away of investors in industrial undertakings during the past two years. In this connection the Federation referred to the award, by the adjudicator, of 50% of reserves to the workers in the dispute concerning *Cawnpore Electric Supply Corporation*. It also referred to the award given in the dispute between *Western India Automobile Association* and its workmen, in which the contract of personal service had been made specifically enforceable against the employer, which was against

'a fundamental principle of law'. The Federation pointed out that leave with pay up to 15 days in a year had been given in certain awards in the electrical and engineering industries in West Bengal, although the Factories Act provided for 10 days' paid leave only. Some industrial tribunals had given varying awards in different units in similar industries and in the same area, particularly so in the engineering industry in Calcutta where different minimum wages, rates of dearness allowance and scales of other amenities had been granted. Apart from placing the unit called upon to pay higher wages in a comparatively unfavourable position, the awards had an unwholesome effect on industrial relations. The Bombay Industrial Court had awarded an increase in the rate of dearness allowance to compensate cent per cent for the rise in the cost of living index; and even in cases where it was not so, the rate of dearness allowance had been fixed at a very high level. The minimum wage had also been revised in an upward direction by the awards of the tribunals. In a number of cases the industrial tribunals had accepted the payment of bonus by a few concerns, which were in a position to do so, as the basis for similar payments in the concerned industry as a whole, with the consequent increase in the cost of production. In case of coal-mining the grant of four months' wages as annual bonus had led to a corresponding rise in the price of coal and a consequential rise in the price of all industrial products. The Federation thought that the cumulative effect of the various awards of industrial tribunals on the inflationary situation in the country was significant.

The Federation added that in a number of cases the awards had been in the nature of determining policies which in the normal course lay in the domain of the Central Government and should have been decided in the context of larger economic issues. The Bihar and Bengal Colliery Awards and the Madras Textile Mills Award had recommended the institution of compulsory provident fund schemes. These recommendations, it was understood, were to a large extent responsible for the Central Government's proposals for initiating a scheme of compulsory provident fund in all industrial undertakings employing more than a specified number of workers. The Federation explained that the tribunals by their very nature

were unlikely to take a full view of all the implications and repercussions of their awards. This pointed towards the need for laying down of certain well-defined principles by the Government of India for the guidance of the tribunals and for the settlement of disputes involving basic industries or industries of all-India importance by a tribunal appointed by the Centre and capable of bringing to bear upon its task an all-India point of view.

#### 4. THE GOVERNMENT INITIATES ACTION

Speaking at the Annual General Meeting of the Associated Chambers of Commerce of India, Calcutta, on December 13, 1948, Dr. John Matthai, Finance Minister, Government of India, said that the Government had realised for some time past that the setting up of a large number of industrial tribunals without any appellate or reviewing authority had led in some cases to divergent, if not conflicting, decisions. The difficulty had been further aggravated by the fact that certain Provincial Governments had legislative enactments of their own which were not on all fours with that of the Central Government. In the case of one of these Provincial Governments both the Provincial and Central Acts were used for dealing with industrial disputes. The Government was urgently examining the steps that should be taken to provide a proper forum for the filing of appeals from decisions in the more important categories of disputes and for the review of awards in certain circumstances. The details of the requisite machinery were still under examination but it was hoped that the setting up of a central appellate and reviewing authority would go a long way towards ensuring greater uniformity. It could not be said that there was a general tendency on the part of industrial tribunals to fix the rates of wages at unreasonable levels. On the whole, it was in respect of basic wages and dearness allowance that there had been the largest measure of uniformity in their decisions. Whatever view one might take regarding the effect of wage rates on inflation, it was difficult to accept the contention that the level of wages awarded by industrial tribunals had generally operated as a contributory cause.

Soon after the announcement of its policy in October 1948,

action was initiated by the Government of India to secure an amendment of the Government of India Act, 1935, to enable the Central Legislature to confer executive authority on the Central Government in respect of subjects included in the Concurrent List. Early in January 1949, a new Sub-section 1(a) was accordingly added by the Central Legislature to Section 8 of the Government of India Act, 1935, with a consequential amendment of Section 126(1).

*Labour Ministers Consider the Question*

The proposal for the establishment of a central statutory tribunal having original as well as appellate jurisdiction was discussed at the Seventh Session of the Labour Ministers' Conference held in January 1949. The Government Memorandum, placed before the Conference, stated:

"The question for consideration is how the necessary degree of co-ordination can be secured in India. It does not of course follow that we should blindly adopt the legislation of other countries. India is a vast sub-continent where conditions vary considerably. Over-centralisation is not practicable. We have to strike a proper balance between central and provincial control. ...The existing division of jurisdiction in regard to industrial disputes between the Centre and Provinces is unsatisfactory because in practice action taken in any important industry has wide-spread repercussions and a decision taken in one Province can force the hands of the Central and other Provincial Governments. The division is also illogical. Under the existing law, a dispute in the Government of India Press at Calcutta comes within the jurisdiction of the Central Government whereas disputes in the Bengal Government press and other private presses come within the jurisdiction of the Provincial Government. To take another illustration, inland water or road transport is Provincial, but the same transport service may pass through several Provinces and adjudication in one case affects all others. Different awards will create serious difficulties in running these transport services. The proposal on which the Government of India would like

to have the views of Labour Ministers is that there should be a Central Statutory Tribunal, independent of Government, consisting of three or five judges, which will hear appeals or reviews from the decisions of all Tribunals whether they are set up by the Centre or the Provinces. These judges will also have original jurisdiction and each will be allotted a particular region."

The Memorandum referred to the wide powers enjoyed by the Labour Relations Board and the Federal Mediation and Conciliation Service in the U.S.A. under the Taft Hartley Act of 1947; the powers vested with the Australian Commonwealth Court of Conciliation and Arbitration to hear appeals from State Courts in four fundamental matters of Commonwealth application, namely, standard hours of work in industry, basic wages and principles of their determination, paid annual holidays, and minimum rate of remuneration for adult females; and the wide powers given under the new labour relations law to the Federal Government in Canada in regard to industrial disputes concerning inland water transport, shipping, radio broadcasting and any works or undertaking anywhere in Canada which were declared by Parliament of Canada to be to the general advantage of Canada or two or more of its Provinces.

During discussions at the Conference, Shri Gulzari Lal Nanda, Minister of Labour and Housing, Bombay, favoured an appellate tribunal, without original jurisdiction, for purposes of co-ordination and ensuring uniformity. Opinion was divided on the question of original jurisdiction. Some Provincial Labour Ministers conceded that original jurisdiction might be provided in case of disputes of all-India importance in banking, insurance, water and air transport, etc., and some contended that even in these fields the Provincial Government should have discretion whether or not to refer the dispute to the central tribunal. Others were totally opposed to the idea on the ground that it would lead to delays and curtail the powers of the Provincial Governments. There was, however, a general agreement that a central appellate body was needed.

#### *The Proposal For a Unified Central Tribunal*

In March the proposal was considered and approved by the

Standing Advisory Committee<sup>14</sup> of the Central Legislature, attached to the Ministry of Labour. The Ministry wrote to the Provincial Governments on 30th May, requesting their views on its proposal to set up, by an Ordinance, a "Central Unified Tribunal" with both appellate and original jurisdiction. The Ministry pointed out that the two factors which needed to be kept in view were the need for ensuring maximum degree of uniformity in awards and the need for maximum economy in expenditure. Under the proposed arrangements, "appropriate" Government would be able to refer to the Central Unified Tribunal any dispute within its jurisdiction under the relevant provisions of the Industrial Disputes Act. Appeal would lie to the Central Unified Tribunal on points of law or principles and on decisions regarding wages, classification of grades, reinstatement of discharged or dismissed workers, retrenchment of surplus staff, hours of work, leave with pay and working in shifts. Just as in the High Court a "Letters Patent" appeal lay to the High Courts from the decision of a single judge, appeal would be allowed from the original jurisdiction of a single member of the proposed Tribunal to a bench of its three members.

All the Provincial Governments favoured the idea of a central appellate body. Most of the Provincial Governments, however, opposed to the idea of original jurisdiction on grounds of delay, inconvenience, added cost and deprivation of the existing rights of the Provincial Governments. One Provincial Government repeated its earlier suggestion, made in August 1948, for the creation of zonal appellate tribunals, preferably one for each Province. Another Provincial Government remarked that entrusting of original work to a Unified Central Tribunal would be an "unworkable" proposition, and suggested the setting up of a unified tribunal in each Province and a unified central tribunal, with the proviso that reference to the central tribunal would be made only on matters of law or principles and in cases of manifest injustice, or a conflict of decisions, or a dispute affecting more than one Province. It added that only the "appropriate" Government, and not the parties to the dispute, should have the right to prefer appeals. This, the Ministry of

14. The Committee consisted of Shri Jagjivan Ram, Shri Hariharnath Shastri, Shri Gokulbhai Daulatram Bhat, Shri Nand Kishore Das, and Maulana Hassrat Mohoni.

Labour felt, would be against the generally accepted principles that the party concerned should be able to prefer an appeal without the concurrence of Government.

As the majority of Provincial Governments were opposed to the idea of giving original jurisdiction to the proposed central tribunal, the Ministry of Labour decided that the tribunal would have appellate jurisdiction in all disputes both provincial and central, but original jurisdiction in disputes falling in the sphere of the Central Government only.

The Ministry noted that the Central Advisory Committee of Legislature had recommended that appeals to the proposed appellate body should be restricted to vital matters affecting labour and management, so that the number of appeals coming up before it would not be large. The Ministry accordingly deleted "hours of work" and "leave with pay" from the list of subjects of disputes for which appeals would be permissible. It, however, added to the list, after considering the suggestions of the Provincial Governments, items like "any contribution paid or payable by the employer to any pension fund or provident fund", "gratuity payable on discharge", etc.

#### *Comments of Provincial Governments on Draft Ordinance*

The Ministry thereafter had a draft Ordinance prepared on the subject and circulated it on July 9th to the Provincial Governments for their comments.

Two Provincial Governments replied that they would like to maintain intact the authority of their Provincial appellate tribunals. One of them proposed that a time limit should be fixed for the decisions of the proposed appellate body and appeals should lie to it only in cases "involving exceptional hardship, intricate points of law or considerations of overriding public importance". The other suggested that appeals should be confined to matters of law and principles.

The Ministry of Labour gave full thought to these suggestions and felt that it would be difficult to determine cases of "exceptional hardship", etc. Further, the large majority of industrial disputes involved only questions of facts, such as adequacy of a wage rate or justification for a certain dismissal or retrenchment; and unless questions of facts were allowed in appeal, it

would be impossible for the proposed appellate tribunal to ensure uniformity in the decisions of industrial disputes throughout the country.

### 5. THE DEMAND FOR APPELLATE TRIBUNAL MOUNTS UP

Meanwhile, as the year 1949 had rolled by, the employers' demand for the creation of a central labour appellate body had mounted up and intensified.

The Bengal Chamber of Commerce & Industry, in a letter dated 17th May, 1949, to the Secretary, Ministry of Labour, Government of India, stressed that there were strong economic and other reasons for attempting to attain some degree of uniformity in the approach of industrial tribunals to labour matters. Partly for reasons connected with the latest developments in adjudication and the inexperience of the adjudicators and partly as a result of more fundamental considerations, there was pressing need for some appellate or reviewing authority. The Chamber thought that this could best be met by a central organisation which would gradually build up a coherent body of case law on the main points at issue, to be applied generally throughout the country. The form which such an organisation might take could be similar to the Income-Tax Appellate Tribunal, the regional branches of which would investigate the cases on lines laid down by the central organisation. The Bengal Chamber of Commerce emphasised: "awards are being issued which are not open to review...and in some instances disastrous decisions are being made and a bewildering maze of often contradictory conditions of service promulgated." ... "An appellate tribunal to which appeals against decisions can be made is the most urgent necessity."

At the Annual General Meeting of the United Planters' Association of Southern India, held from August 23 to 25, 1949, the President of the Association, Mr. F.G. Wallace, underlined the importance of an appellate authority to revise and co-ordinate the mass of confusing, frequently contradictory and sometimes disastrously 'unwise' awards of various industrial tribunals, which were more responsible for the indiscipline and declining output of the workers than all the agitation of trade unions. The need

for establishing a central appellate tribunal, with a chartered accountant of high calibre among its members, with the least possible delay was also urged by Shri Vithal N. Chandavarkar in his presidential address at the Seventeenth Annual General Meeting of the Employers' Federation of India, Bombay, held in December 1949.

#### 6. THE GOVERNMENT DECIDES

The Government of India took a final decision in September 1949 to set up a Labour Appellate Tribunal and directed that a draft Bill should be prepared to initiate necessary legislation. It had been originally intended to include the necessary provision for setting up the L.A.T. in a new, comprehensive Labour Relations Bill<sup>15</sup> which was expected to be introduced in the Central Legislature during the Budget Session for 1949, but it was not found possible to introduce the Bill in that Session. As it was uncertain when a Bill of such importance and complexity was likely to be passed, the Government decided towards the end of November 1949 to initiate immediately separate legislation for the establishment of the L.A.T., as any further delay in doing so might have affected the usefulness of labour relations machinery and led to deterioration in employer-employee relations.

On 9th December, 1949, Government introduced the Industrial Disputes (Appellate Tribunal) Bill in the Constituent Assembly (Legislative). The Bill sought to provide for the establishment of an Appellate Tribunal and to make certain incidental changes in the existing law, Central as well as Provincial, relating to industrial disputes. The Statement of Objects and Reasons of the Bill, *inter alia*, read as follows:

"The working of the Industrial Disputes Act, 1947, which introduced for the first time the principle of adjudication has revealed the need for a Central Appellate Authority which, by its decisions, would co-ordinate the activities of the large number of Industrial Tribunals set up by the Central and Provincial Governments. Some Tribunals

15. The Ministry of Labour, Government of India, had announced in a press note in March 1949 its intention to undertake a comprehensive revision of the Industrial Disputes Act, 1947, and to replace it by a new enactment called the Labour Relations Act.

have been known to take divergent views on important issues such as profit-sharing, retirement benefits, etc. Industrial undertakings with branches in more than one Province, and particularly those that employ transferable staff on all-India basis, have to face anomalies and complications arising out of the varying decisions of Tribunals in different Provinces. As a result, there has been a persistent demand for some time past, for the setting up of an Appellate Tribunal and the Bill seeks to meet this demand.”<sup>16</sup>

#### *The Employers' Memoranda*

The Bombay Chamber of Commerce and Industry, in a letter to the Ministry of Labour towards the end of January 1950 observed that the introduction of compulsory arbitration had undoubtedly encouraged trade union leaders to put forward unreasonable demands and many of the awards of the Provincial adjudicators have had serious repercussions in concerns with places of business in different parts of India. The Chamber urged that the early establishment of a central appellate tribunal to co-ordinate the activities of Provincial tribunals and to ensure some uniformity in adjudication awards was, therefore, very necessary.

The All-India Organisation of Industrial Employers<sup>17</sup> (A.I.O.I.E.), in a special note on *Bonus Awards* published in

16. It is alleged, that a leading business house in India had, as a result of an industrial award adverse to it, brought pressure to bear on one of the Ministers of the Central Government for the establishment of an appellate body. (Interview with some prominent labour leaders)
17. The All-India Organisation of Industrial Employers was founded in 1932 to promote, support or oppose legislative and other measures affecting or likely to affect directly or indirectly, industries in general, or particular industries, to promote and support all well-considered schemes for the general uplift of labour, and to take all possible steps to establish harmonious relations between capital and labour. It is the sister organisation of the Federation of Indian Chambers of Commerce and Industry and is one of the three national organisations of employers recognised by the Government of India for purposes of representation on tripartite labour consultative machinery at the national and international levels. It had on 31st March, 1963, 38 “association members” and 137 individual members.

February 1950 (a copy of which was sent to the Ministry of Labour), pointed out that in conformity with the prevailing tendency of the industrial tribunals to grant concessions to labour without any reference to common law or to the general economic conditions, the Industrial Court, Bombay, in the Bombay Textile Award of 1949, had gone a step further and had confused the issue by ruling that bonus was partially a deferred wage and partially of the nature of profit-sharing. In this award the Court had allowed a bonus equal to  $4\frac{1}{2}$  months' basic wages which had been demanded by the workers. On the other hand, the Industrial Tribunal in the case of the West Bengal Cotton Textile Industry had laid down a formula linking the quantum of bonus to the dividend declared by the concern, the total annual earnings of the workers and the number of days worked. Furthermore, there were cases where the tribunals had awarded 25% of the profits of the company in a particular year to be distributed as bonus to the workers. Even here, some had taken the gross profits and some net profits. The basis on which some of the tribunals had arrived at the amount of bonus varied according to the sense of fairness of the adjudicators. The sentiment of the adjudicators and their view of how things ought to be, rather than any recognised principles, had been the sole guiding factors behind many of the awards. In several awards, the adjudicators had stretched legal principles to encompass not only new situations but also cover desirable social ends, as viewed by them personally. In view of the comparative newness of legislation concerning industrial disputes, case law about grant of bonus, etc. was still in the formative stage. The adjudicators and the courts had no industrial code to guide them.

The A.I.O.I.E. felt that such lack of uniformity of method and want of definite set of principles was bound to result—their effects were already discernible—in undesirable consequences, not only for the employers but also the workers and ultimately for the national economy. An unduly liberal award made in some industry or Province was sure to attract the attention of the workers in other industries and regions, making them agitate for similar terms in their respective concerns, irrespective of the standing or prospects of the concerns. It tended to set in motion a vicious circle, causing new and unnecessary disputes, as experience had shown. The A.I.O.I.E. emphasised that

unless a provision was made for appeal, the continuance of the existing system of industrial tribunals would add to the feeling of uncertainty from which the employers were already suffering and would adversely affect further industrial development by making them feel that the risk of investing their moneys was not worth taking because all the profits that they might earn, which was the main motive of the private enterprise, would be distributed away by an outside authority.

The All-India Organisation of Industrial Employers added that the bonus awards had also an inflationary aspect. The Bombay Textile Industry had alone distributed Rs. 4.32 crores as bonus for the year 1948; and the Ahmedabad Textile Industry, about Rs. 2.63 crores. Some of the awards had given labour a scale of remuneration which even under the most liberal estimate<sup>18</sup> of the Committee on Profit-Sharing would not have been granted to them. For instance, the benefit that would have accrued to labour in Bombay for the year 1948 under even the liberal profit-sharing scheme as recommended by the Committee would have been Rs. 3.58 crores, as against Rs. 4.32 crores actually awarded by the Industrial Court as bonus. The inflationary aspect of bonus awards had, it was pointed out, already led the Government to issue an ordinance enabling the employers to pay the bonus in the form of national savings certificates but this experiment had proved a very limited success.

The note of the A.I.O.I.E. concluded: "Unless we want to cut at the very root of private initiative and economic freedom, we should draw a boundary line to the field of State regulation and interference. The power of the tribunals to award bonus lies far beyond such a boundary line; for, it is tantamount to compulsory profit-sharing. In this system of profit-sharing there is no principle, no consent of the parties concerned; the industrial tribunals are the sole arbitrators on the question. Neither the tribunals nor the public seem to be aware of its consequence on the growth of industrialisation which is so vital to our economy."<sup>18</sup> The Organisation noted that the Select Committee of the Central Legislature had already

18. The All-India Organisation of Industrial Employers received complaints from its constituent members in U.P. that the appointment of conciliation officers as adjudicators in that Province had resulted in State "very bad decisions".

reported on the Industrial Disputes (Appellate Tribunal) Bill, 1949, and hoped that the Appellate Tribunal contemplated in it would be constituted at an early date.

#### 7. DISCUSSIONS AT THE INDIAN LABOUR CONFERENCE

Before considering the discussions in the Central Legislature on the Industrial Disputes (Appellate Tribunal) Bill, 1949, it would be worth-while to pause and take note of the observations made, about the proposed establishment of the L.A.T., during the deliberations at the Tenth Session of Indian Labour Conference which met in New Delhi on March 20-22, 1950, to discuss the Labour Relations Bill, 1950, and its sister Trade Unions Bill.<sup>19</sup>

19. The Labour Relations Bill provided for a simple procedure for collective bargaining, which included certification of bargaining agents; prohibition of strikes and lock-outs until the parties had resorted to collective bargaining; obligation on both the employers and workers to observe collective agreements; forfeiture of claim for bonus and liability for dismissal for the employees' failure to comply with the terms of collective agreements; etc. The provisions regarding compulsory arbitration proposed in the Bill were more stringent than those of the Industrial Disputes Act, 1947. The Statement of Objects and Reasons of the Bill said: "It should be the goal of a progressive labour policy to influence labour-management relations and make the withdrawal of state intervention possible. A strong trade union movement which is conscious alike of its rights and responsibilities, one that will stand on its own legs and not lean for ever on a crutch, can alone make industrial peace enduring. It is the aim of the Bill to build up labour-management relations on such sure foundations . . ." About the proposed provisions concerning collective bargaining, Shri Jagjivan Ram, inaugurating the Indian Labour Conference, said: "I feel that sooner employers and workers develop the habit of planned collective bargaining, the sooner will they find themselves freed from the shackles of courts and tribunals, boards and committees which, however inevitable they may be, seem at times so great a burden..." Justifying the new proposed legislation, Shri Jagjivan Ram stated in Parliament on April 5th that though the Government wished to promote collective bargaining, it could not, under the prevailing circumstances, divest itself of the right to refer the disputes for adjudication if either of the party were to become intransigent. He added: "As soon as the working class movement in this country becomes a movement of the working class by the working class and for the working class it will be possible to encourage collective bargaining and it will be possible for the Government to withdraw completely."

During the discussions at the Conference, Shri N. Barlow (Employers' Federation of India<sup>20</sup>) pointed out that a welcome feature of the proposed legislation was that it would ensure uniformity all over the country, particularly in the awards of industrial tribunals. Shri Sri Ram (A.I.O.I.E.) maintained that the main justification for the proposed enactments lay in the widely differing decisions of adjudicators and industrial courts appointed by different Governments.

Shri S. P. Dave (I.N.T.U.C.) regretted that the procedure for settlement of disputes involved long periods of waiting for the workers. He feared that if the decisions of tribunals were to go against employers, they would not hesitate to prefer appeals and the labour unions were hardly strong enough financially to fight out the appeals. It was therefore essential that there should be some agency which would decide whether appeals were really necessary. Further, the whole labour-relations machinery should be so simplified as not to impose a heavy burden on the workers. Dr. (Mrs.) Maitreyee Bose (I.N.T.U.C.) complained that the awards of tribunals were not being promptly implemented and that it would be very difficult for the workers, who were poor, to go to the appellate tribunal. Shri R. S. Ruikar (H.M.S.), while accepting the need for uniformity in the decisions of industrial tribunals, felt that the stipulated provision for appeals to the appellate tribunal might lead to worse troubles. The freedom to file an appeal more or less in every case would enable the employers to get stay orders and thereby nullify the usefulness of industrial tribunals. It was, therefore desirable that only the Central Government should be authorised to determine whether an appeal should be made.<sup>21</sup>

20. The Employers' Federation of India, Bombay, is one of the three all-India organisations for promoting and protecting the interests of employers in India engaged in trade, commerce, industries and manufactures, recognised by the Government of India for representation on the national tripartite labour consultative machinery and for participation in International Labour Conferences. It was originally mostly European in character but it now includes several Indian members also.
21. During the discussions, Shri V. Chakkrai Chettiar (A.I.T.U.C.) and Shri Asoka Mehta (H.M.S.) vehemently opposed the contemplated restrictions (in the Labour Relations Bill) on the right of workers to strike, the severe penalties proposed for default and the underlying principle of compulsory adjudication of disputes, on the ground that it would seriously hamper the growth of trade unionism.

### 8. DISCUSSIONS IN THE CONSTITUENT ASSEMBLY (LEGISLATIVE)

On 9th April 1950, Shri Jagjivan Ram, Union Minister of Labour, moving the Industrial Disputes (Appellate Tribunal) Bill as modified by the Select Committee for the consideration of the House, said that though the Bill had originally formed a part of the contemplated comprehensive Labour Relations Bill, 1950, it had been thought desirable to go ahead with it, considering that the passing of the Labour Relations Bill was likely to take some time. The establishment of an appellate tribunal, he felt, would help achieving uniformity in the interpretation of labour laws throughout the country. Provision had also been made to ban the discharge or dismissal of workmen during the pendency of adjudication, and it was hoped that such a provision would reduce the incidence of industrial disputes.

Shri Hariharnath Shastri (I.N.T.U.C.) said that the new machinery of appellate tribunal, if it were added to the existing arrangements, was bound to be utilised by the employers to delay justice which was already delayed. Shri Shastri believed that in no country in the world any provision had been made in its labour laws for the establishment of an appellate tribunal. The proposal for the L.A.T. had originally formed part of the Labour Relations Bill, and taken out of context and put on the statute book, it was likely to create the most unfavourable psychological atmosphere in the country. Shri Shastri stressed that the proposed appellate tribunal would not be able to achieve any uniformity of approach in decisions of lower tribunals and even if uniformity were desirable, it could be achieved without bringing forward or introducing any such new element in legislation on labour-management relations. In many countries of the West there existed industrial councils or committees of a national character where the representatives of labour, management and also of the Ministry of Labour would come together and try to set minimum, uniform standards. If similar councils were made part and parcel of the industrial-relations machinery in

Shri Hariharnath Shastri (I.N.T.U.C.), welcoming the proposed legislation, said that certain commitments arising from the Industrial Truce Resolution such as fair wages, profit-sharing and housing, should have received precedence over the two Bills.

India, they would prove as beneficial and effective as they had proved in other countries. Shri Shastri concluded that there was neither any urgency nor necessity to set up an appellate tribunal. Even if it were to be established, the scope of the tribunal should not be so wide and powers so unlimited as to lead to delay and litigation. Its scope should be narrowed down to two or three matters, namely, interpretation of agreements or awards of industrial tribunals, interpretation of points of law and disposal of cases referred to it on public grounds by the State Governments or by the Central Government. He urged the Labour Minister to withdraw the Bill, and if that was not possible, to remove at least its objectionable features.<sup>22</sup>

Shri R. Venkataraman (Congress) gave qualified support to the Bill. He wished the Bill had been postponed pending consideration of the Labour Relations Bill, and opined that the whole idea of an industrial appellate tribunal was based on a misconception of the functions of an industrial tribunal. Shri Venkataraman added that, under the existing law, the consent of both the parties was essential for the appointment of assessors of the tribunal, but for the assessors to the appellate tribunal it had been proposed that only consultation with both parties would be necessary and not their consent. Shri Venkataraman urged that the right of the working class to give their consent to the appointment of assessors should not be 'so lightly' taken away.

22. Referring to the establishment of the L.A.T., the I.N.T.U.C., in its *Replies to the Bonus Commission Questionnaire* (1962), stated: "In spite of such widely varying basis and methods adopted by Tribunals and parties to settle bonus disputes in the early days, the position was on the whole satisfactory. ...This happy harmony was disturbed by the employers approaching the Government of India and asking for an Appellate Forum. They complained that no fixed principles were followed by the various Tribunals while deciding bonus disputes and that it was necessary to introduce an element of uniformity to govern the decision of all bonus disputes by the various Tribunals. The Government responded to the request of the employers and enacted the Industrial Disputes Appellate Tribunal Act of 1950..."

The I.N.T.U.C. felt that they could expect a more favourable treatment from industrial tribunals than from an appellate tribunal. The very reference of an industrial dispute by the Government, at the request of the workers, to the tribunal had implicit in it an indication that the Government wished the tribunal to safeguard the interests of the workers. (Interview with the President of one of the I.N.T.U.C. State Branches)

Furthermore, the provision authorising the Government to reject or modify the awards was 'absolutely unjustified'. It was doubtful if any retired judge of a High Court would 'ever agree' to serve on a tribunal where his judgement would be subject to variation by the Government. The confidence that had been created by the industrial tribunals would be very much shaken if such a power was given to the Government. Shri Venkataraman added that he could well envisage several forms of pressure being brought to bear on the Government for the exercise of that power in favour of those who were well-placed in society.

Shri P.D. Himatsingka (Congress) feared the powers provided for the Government under the Bill were bound to be exercised only in favour of labour and not of employers.

Shri Ajit Prasad Jain (Congress) said that the Bill was conceived in a healthy spirit but was too legalistic. The procedure laid down was not at all suited to labour courts, as it had been based on the Civil Procedure Code. He emphasised that the rules for labour courts should be simple.

*A* Shri Jagjivan Ram, Labour Minister, replying to the debate, said that the need for interference by the Government in the awards of the industrial tribunals was apparent to those who bore in mind the distinction between judicial and social justice. There was, therefore, no justification for fearing that eminent men might refuse to sit on the appellate tribunal. The Labour Minister assured that the Government would not interfere with the work of the L.A.T. in any manner. Even in regard to the decisions of the High Court and Supreme Court in criminal cases, the Government had the right to commute sentences. The appellate tribunal could not discharge its work satisfactorily if it were to go into points of law only, as suggested by Shri Shastri; it must look into questions of fact also.

\* \* \*

The Industrial Disputes (Appellate Tribunal) Bill was passed by the Central Legislature on April 11, 1950, and it received the assent of the President of India on April 20.

#### 9. THE L.A.T. IS CONSTITUTED

The Industrial Disputes (Appellate Tribunal) Act, 1950, authorised the Central Government to constitute a Labour Appellate

Tribunal for hearing appeals from the awards or decisions of industrial tribunals. The Appellate Tribunal was to consist of a Chairman and such number of other members as the Central Government might, from time to time, think fit to appoint. Any person who had been a Judge of a High Court or was qualified for appointment as a Judge of a High Court or who had been a member of an industrial tribunal for not less than two years could be appointed as a member of the Appellate Tribunal. The normal tenure of office of a member was fixed as five years. The Chairman of the Appellate Tribunal was authorised to constitute as many Benches of the Tribunal as considered necessary for the purpose of carrying out its functions.

The Appellate Tribunal was empowered to hear appeals from any award or decision of an industrial tribunal if (a) the appeal involved any substantial question of law, or (b) the award or decision related to wages, bonus or travelling allowances, employers' contributions to pension fund or provident fund, amounts payable for defraying special expenses, gratuity, classification of the workmen by grades or retrenchment. No appeals, however, would lie from awards made by any tribunal with the consent of the parties, any settlement arrived at in conciliation proceedings or the decision of an arbitrator appointed under any law with the consent of the parties.

The decisions of the Appellate Tribunal became enforceable on the expiry of 30 days from the date of their pronouncement. The appropriate Government could, however, reject or modify any decision before the expiry of the stipulated period, if it felt that it would be inexpedient on public grounds to give effect to the whole or any part of the decision. In all such cases it was obligatory on the part of the Government concerned to place the decision together with the reason for rejecting or modifying it before the appropriate legislature as soon as possible.<sup>23</sup>

By a notification issued on 8th August, 1950, the Central

23. Other changes introduced by the Industrial Disputes (Appellate Tribunal) Act included modification of Section 33 of the Industrial Disputes Act, 1947, so as to prohibit the discharge or dismissal of any workman, during the pendency of conciliation or adjudication proceedings, without the express permission of the conciliation or adjudication authority and vesting the appropriate Government with the power to extend the period of operation of any award up to a maximum period of three years.

Government constituted a Labour Appellate Tribunal with Shri J.N. Majumdar, retired Judge of the Calcutta High Court, as its Chairman and Shri F. Jeejeebhoy, Chairman of the Central Industrial Tribunal, Calcutta, as its member. The seat of the Tribunal was at Bombay. In September 1950, the Appellate Tribunal was strengthened by the appointment of three additional members, viz. Shri R. C. Mitter, retired Judge of the Calcutta High Court, Shri K. P. Lakshmana Rao, retired Judge of the Madras High Court, and Shri G. P. Mathur, retired Judge of the Allahabad High Court. These appointments facilitated the establishment of a Bench of the Tribunal at Calcutta in October 1950. Later on, Benches were set up at Madras and Lucknow also. Additional *ad hoc* Benches were also established to deal with urgent cases.<sup>24</sup>

24. The *Capital*, in its issue of November 16, 1950, welcoming the establishment of the L.A.T., said, "An Industrial Tribunal seems to be a Court and yet not a Court, its functions and duties being very much like those of a body discharging judicial functions, although it is not a Court. It is not required to be guided by any substantive law in deciding disputes which come before it. It can override contracts, and it is not bound by ordinary rules of evidence, and it has powers of redress where it considers redress is needed comparable only to those of the Lord Chancellor exercising 'natural' justice as distinct from the common law, in pre-Victorian days. ...It is not surprising that the demand by industrial undertakings is based not merely on 'anomalies and complications' but on chaos".

**DECISION TWO :**  
**THE DECISION TO ABOLISH THE L.A.T.**

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## I. THE YEARS OF INITIAL TRIAL

### 1. LABOUR SITUATION DURING 1950-52

THE YEAR 1950 RECORDED a considerable drop in the number of industrial disputes (814) resulting in work stoppages, as compared to the previous year (920). The resultant time-loss to industry, however, showed a large increase during the year (12.8 million man-days as against 6.6 million in 1949) on account of a general strike in the cotton mill industry in Bombay City in August, which alone accounted for over 9.4 million man-days. The number of adjudications under the Industrial Disputes Act, 1947, rose from 926 in 1949 to 1275 in 1950, 1574 in 1951 and 1712 in 1952.

There was a general improvement in the labour situation in the years 1951 and 1952. The number of disputes during these two years was 1071 and 963 respectively but the number of man-days lost was 3.8 and 3.3 million. The time-loss due to industrial disputes in 1952 was the lowest on record during the post-war years. One dismal feature, however, was the worsening of the employment situation towards the end of 1952 when about 50,000 tea garden labourers and a large number of other staff were thrown out of employment due to closure of several tea gardens.

The percentage of disputes concerning bonus was 9.3 in 1950, 6.8 in 1951 and 10.1 in 1952; and for disputes relating to wages and allowances the corresponding figures were 28.6, 29.4 and 30.4 respectively.

The average annual money earnings of factory workers (calculated from returns received under the Payment of Wages Act, 1936) increased from Rs. 985.8 in 1949 to Rs. 1,111.9 in 1952 and their index number (Base: 1947) from 134.4 to 150.9, and the index of real earnings from 116.9 to 127.60. This was due partly to the increases in the dearness allowance and the substantial amounts of bonus received by the workers during 1950-1952. At several important centres like Ahmedabad,

Bombay, Baroda, Coimbatore, Delhi and Madurai bonuses were paid, amounting to 2 to 4 months' basic earnings.

The average daily number of workers employed in factories was 2.95 million in 1950 and 2.91 million in 1951 and 3.02 million in 1952. The average daily employment in mines was .44, .55 and .56 million respectively in 1950, 1951 and 1952; and in plantations 1.25, 1.21 and 1.23 million respectively. Shops and commercial establishments employed on the average .93 million persons in 1951, and 1.09 million in 1952. The number of registered trade unions increased from 3,522 in 1949-50 to 4,623 in 1951-52; and the number and membership of unions submitting returns from 1,919 and 1.82 million to 2,556 and 1.99 million respectively.

The average (median) unionisation ratio (percentage of union members to average daily employment) in the more important industry groups was 34.5 per cent in 1952-53. In all textiles it was 39.8 per cent. The average daily employment in textiles was 1.18 million in 1952.

## 2. THE FIRST TWO YEARS OF THE L.A.T.

### AWARDS ON BONUS

#### *The Full Bench Formula*

An important award in regard to the workers' claim to bonus was given by the L.A.T. (Full Bench at Bombay, Shri J. N. Majumdar, Chairman; Shri R. C. Mitter; Shri K. P. Lakshmana Rao; Shri G. P. Mathur; and Shri F. Jeejeebhoy) in October 1950, laying down the broad principles for bonus which later on became a guide for all adjudicators and tribunals in the country and came to be known as the Full Bench Formula. The award concerned the dispute between *The Millowners' Association, Bombay*, (representing 59 member mills, of which 4 appeared separately) and *Rashtriya Mill Mazdoor Sangh and another* (both registered under the Bombay Industrial Relations Act, 1946, as the representative unions of the textile workers in the city of Bombay and Kurla Borough Municipality respectively). About the nature of the claim to bonus, the Full Bench said:

"Bonus is cash payment made to employees in addition

to wages. It cannot any longer be regarded as an *ex gratia* payment, . . . Where the industry has capacity to pay, and has been so established that its capacity to pay may be counted upon continuously, payment of 'living wage' is desirable; but where the industry has not that capacity or its capacity varies or is expected to vary from year to year, so that the industry cannot afford to pay 'living wage', bonus must be looked upon as the temporary satisfaction, wholly or in part, of the needs of the employee." . . . "As both capital and labour contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit, if there is a surplus after meeting prior or necessary charges."

The L.A.T. laid down that the claim to bonus must satisfy three conditions: (1) the wages fell short of living wage; (2) there was a surplus available, during the particular trading year, for distribution among the workers after deducting prior charges, a fair return on paid-up capital and on reserves employed as working capital, and (3) the surplus was attributable to the efforts of the workers. The L.A.T. further held that if a particular firm were to show losses, although the industry as a whole in the region showed profits, no bonus should be awarded to the employees in the losing concern.

About the prior charges, the L.A.T. noted:

"The first charge on the gross profits should, . . . be the amount of money that would be necessary for rehabilitation, replacement and modernization of the machinery. As depreciation allowed by the income-tax authorities is only a percentage of the written down value, the fund set apart yearly for depreciation and designated under that head would not be sufficient for these purposes. An extra amount would have to be annually set apart under the heading of 'reserves' to make up that deficit."

As regards return on paid-up capital, the Appellate Tribunal felt that the fair return for it would be 6%. As to the reserves employed as working capital, the Appellate Tribunal held that the fair return on them must be (as recognised by the Tariff Board in its Report on the Cotton Yarn and Cloth Prices in

Bombay, 1948) much lower than the fair return on paid-up capital, e.g. 2%. The justification for a fair return on reserves used as working capital was given by the L.A.T. in the following words:

“The reserves which are carried over from year to year in law belong to the company, and in our view the company is entitled to some return for the money employed as working capital. The company is entitled to deal with this return as it chooses, and neither the shareholders individually nor the employees *can as of right claim any direct benefit* accruing out of the employed capital; therefore the amount has to be credited to the company. There cannot be any doubt that the employment of the reserves as working capital obviates the borrowing of money *pro tanto* from outside sources for the same purpose, and may be at higher rates of interest.” (Italics by the author)

About the quantum of bonus, the L.A.T. said:

“After the aforesaid deductions there remains a surplus and the issue is whether the employees are entitled to any and, if so, to what bonus. The answer to this issue is not easy, for we have to consider in this context the needs of the employees, the claims of the share-holders, and the requirements of the industry. The subject is not readily responsive to any rigid principle or precise formula, and so far we have been unable to discover a general formula. This does not, however, mean that the answer to this issue is in any way fortuitous; nor are we in any doubt as to the considerations which must prevail in deciding what the amount of bonus should be. Essentially the quantum of bonus must depend upon the relative prosperity of the concern during the year under review, and that prosperity is probably best reflected in the amount of the residuary surplus; the needs of labour at existing wages is also a consideration of importance; but we should make it plain that these are not necessarily the only considerations; for instance, no scheme of allocation of bonus could be complete if the amount out of which a bonus is to be paid is unrelated to

employees' efforts; and even when we have mentioned all these considerations we must not be deemed to have exhausted the subject. Our approach to this problem is motivated by the requirement that we should ensure and achieve industrial peace which is essential for the development and expansion of industry. This can be achieved by having a contented labour force on the one hand, and on the other an investing public who would be attracted to the industry by a steady and progressive return on capital which the industry may be able to offer. It goes without saying that if the residuary surplus is appreciably larger in any particular year it should be possible for the company to give a more liberal bonus to the employees."

Taking the total amount for rehabilitation of machinery at Rs. 72 crores (as fixed by the Industrial Court, in the light of the opinion of the Tariff Board) on the basis of the original value of the block of machinery, with the multiplier as  $2\frac{1}{2}$  to 3 to meet the increase in replacement costs, the L.A.T. felt that a provision for Rs. 41.54 crores should be made for rehabilitation reserves during the 13 years 1949-1962, and it allowed for rehabilitation for the year 1949 a total of Rs. 3.19 crores (Rs. 1.31 crores as rehabilitation reserves and 1.88 crores as depreciation) as against Rs. 4.15 crores ordered by the Industrial Court (Rs. 2.27 crores as rehabilitation reserves and Rs. 1.88 crores as depreciation). The L.A.T. confirmed the Industrial Court's award of bonus equal to 1/6th of the basic wages (a total amount of Rs. 1.86 crores for the year 1949) but it set aside the conditions that no bonus should be paid to those who had worked for less than 32 days and those dismissed for misconduct. In the calculations set forth by it, the L.A.T. allowed for taxes after deducting depreciation and bonus to employees. (Bombay Government Gazette Extra Ordinary, dated 10th October, 1950, 1950 II LLJ 1247)

#### *Subsequent Awards on Bonus*

The principles enunciated in the Full Bench Formula were followed by the different Benches of the L.A.T. in their awards during the period September 1950-October 1952. (The important awards are indicated in Appendix I to enable the reader to

form an idea for himself of the uniform approach or otherwise followed by the L.A.T. in regard to bonus. Wherever possible, the name of the L.A.T. Bench has been given, as also the date of each decision.)

From the awards summarised in Appendix I, it will be seen that the L.A.T. scrupulously insisted that unless there was a surplus available from the trading results of that particular year, no bonus should be awarded even if the wages were low. The L.A.T. upheld the workers' claim to puja bonus on grounds of explicit or implicit agreement to pay it even if there was no surplus, but it refused to award bonus for the simple reason that the concern had paid it during some past years and it had thereby acquired a customary character. The L.A.T. also refused to allow provision for future losses or gains for purposes of determining the available surplus; it also excluded in such a calculation profits arising from the sale of waste and scrap material and from the sale and purchase of cars and trucks which, it thought, were unrelated to the workers' efforts. In some appeals it allowed 4% return on the working capital as against 2% laid down in the Full Bench Formula, stating that the latter percentage was not an invariable rule and that each case depended on its merits. It similarly allowed a higher rate than 6% on capital for an automobile concern, where risks were large and prospects of profit uncertain. The L.A.T. insisted that statutory depreciation must be deducted in full and provision should be made for additional rehabilitation also, if necessary. In regard to depreciation reserves, it emphasised that a claim for a return on them would be admissible only when it was shown how and for what purpose they had been actually utilised.

For the textile mills in Bombay in, connection with which the Full Bench Formula was formulated in 1950, the L.A.T. allowed subsequently separate rehabilitation for buildings, calculated on the basis of the original value of the block. The rehabilitation for the machinery allowed in 1950 in this case had also been determined on the original value of the block. However, in the dispute between *Textile Mills, Ahmedabad* and *Textile Labour Association*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Mathur) allowed rehabilitation for land, plant and machinery, calculated on the basis of the depreciated value of the block (not on its original

value). The members of this Bench were incidently also the members of the Full Bench which gave the famous bonus award in 1950. The L.A.T. also ruled that the proper methods of ascertaining the surplus available for rehabilitation would be to deduct the value of the block from the total funds at the disposal of the concern. The L.A.T. affirmed that this was the method adopted in *Bombay Millowners' case*. It explained: "In an established concern the block comprising land and building, and plant and machinery has been built up from paid-up capital, reserve fund, depreciation fund and sometimes out of debentures and loans. So far as paid-up share capital is concerned, the whole of it may be taken to have been sunk in the block. As regards the depreciation fund which is strictly meant to provide for replacement and renewals it is difficult to ascertain what part of that fund has been actually spent in replacement and what part in extension of the block. Similar difficulties will arise in finding what part of the reserve fund and loans has been actually spent in financing working capital and what part in extension of the block."

The Industrial Court in this case had ordered 53 mills to pay bonus equal to 1/6th of the annual basic wages for the year 1949. The L.A.T. upheld the award of the Industrial Court but exempted three mills on the ground that no surplus would be left after deducting prior charges. The L.A.T. allowed ten mills with alleged losses to appear separately. The L.A.T. agreed with the Industrial Court that "it may well be expedient from the point of view of industrial peace to determine the quantum of bonus industry-wise in a given locality; but in the absence of any legislative provision entailing upon us the obligation to direct even those mills that have not made profits but have suffered loss instead, to pay bonus alike with those that have made profits, we do not think we would be adjudicating equitably in relation to the former if we direct them to pay bonus." (18-7-51, 1951 II LLJ 353) In another case, the L.A.T. refused to allow depreciation on new plant to such an extent as would destroy the workers' claim to bonus. In some other appeals, it insisted that the quantum of bonus awarded should not be such as would exhaust all the available surplus for the year concerned.

The L.A.T. ruled that it was for the workers to prove the

case for bonus, as also to substantiate discrepancies, if any, in the balance-sheets. It generally accepted the balance-sheets furnished by the concern, unless the workers could prove otherwise. In *Sugar Mills of Bihar v. Their Workmen*, and in *Sugar Mills, U.P. v. Their Workmen*, the Calcutta Bench of the L.A.T. (Shri Majumdar, Shri Mitter and Shri Mathur) upheld the grant of bonus on industry-wise basis on the ground that conditions of service and wages were standardised in each region. The L.A.T. further ruled that bonus could not be linked with profits in the sugar industry, in view of the unreliability of the balance-sheets produced by the employer. It, therefore, awarded a graded scale of bonus linked to production (the total quantity of cane crushed) to ensure a uniform burden for all factories. (17-3-51, 1951 I LLJ 469 and 19-12-51, 1952 I LLJ 615)

As regards bonus in branches of parent concern, the general approach of the L.A.T. was that if the accounts regarding capital and profit and loss were kept separately, bonus should be payable on the basis of trading results of individual branches; otherwise on overall surplus of the parent concern. The L.A.T. rejected the demand for calculating bonus on the basis of consolidated wages on the ground that it would be against the past practice and would disturb the wage differentials. It held that both clerical staff and industrial workers were equally eligible for bonus.

On the disputed question of linking bonus to dividends and giving workers a share in the reserves, the L.A.T. denied the claim of linking bonus to dividends on the ground that employers might apportion large profits to reserves. It added the workers had no legal claim to reserves on the winding up of a company, being not partners or shareholders. (See the following cases cited in Appendix I: *Trichinopoly Mills Ltd. v. National Cotton Mill Workers' Union; Textile Mills, Madhya Pradesh v. Their Workmen*; and *Lahore Electric Supply Company v. Lahore Electric Supply Employees' Union*.) The L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) felt in *Textile Mills, Madhya Pradesh v. Their Workmen* that the Full Bench Formula was a dispensation of social justice within appropriate limits. It said: "By that decision we lifted bonus out of the category of gratuity and gave a right

to workmen to claim bonus if the trading results of the year in question resulted in profits out of which a surplus was available for bonus. ...The scheme of our formula was to do social justice; our Full Bench was moved by a desire to give a fair deal to labour, and the resultant formula was the best that we could devise in the circumstances to do justice to the parties.” (1-10-52, 1952 II LLJ 624)

About the reasonableness of the Formula, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) in the dispute between *The Millowners' Association, Bombay*, and *Rashtriya Mill Mazdoor Sangh*, observed:

“The formula of our Full Bench is the nearest approach to an equitable solution of the problem of bonus. It is, however, inevitably based on a number of factors, quite a few of which are open to challenge every time the question of bonus is brought up for consideration. We have felt, and we still feel, that with the requisite goodwill of which neither party is wanting, an agreed formula could be devised, broad-based on a sliding scale of production and prices which would reduce the field of contest and create greater harmony between the parties. We would welcome such a scheme for we realise its advantages. The parties, however, seem to be content with our Full Bench Formula, but that should not exclude from their consideration the possibility of devising a scheme with a few component parts which could be easily collected. ...” (21-2-52, 1952 I LLJ 518)

A significant award in which the L.A.T. departed from the Full Bench Formula related to the dispute between *Muir Mills Ltd.*, and *Suti Mill Mazdoor Union*, Kanpur. (19-2-51, 1951 I LLJ 447) The L.A.T. at Allahabad (Shri Mitter and Shri Mathur), directed the company to pay bonus to the workmen at the rate of Rs. .25 of their basic earnings for the year 1949 even when the balance-sheet of the company for the year 1949 showed a trading loss amounting to over Rs. 5 lakhs. It may be noted that the Industrial Court, Kanpur, had earlier given judgement in favour of the concern, yet the Appellate Tribunal, though admitting that the workers were not entitled to bonus for the year in which there was a trading loss, gave its judgement in favour of the workmen, granting bonus on the

principles of "social justice". During the year 1948 the company had paid  $24\frac{1}{2}$  per cent dividend on ordinary shares, being the maximum that could be paid under the Public Companies (Limitation of Dividend) Ordinance of 1948 and had also paid to the workers a bonus at the rate of Rs. .25 of their basic earnings. In granting bonus for 1949, the Labour Appellate Tribunal observed:

"As at present advised a claim for bonus which had been rested on profits earned should ordinarily be determined on the basis of the profits earned in the year under claim and that the scale of bonus should be determined on the quantum of profits earned in the year. So, it would follow that if there is trading loss in the year under claim, bonus should not ordinarily be awarded.

"But in our opinion, that should not be the universal rule. Considerations of social justice cannot be disregarded altogether, in relations between capital and labour. There may be special cases, and we consider the case before us to be one, where social justice would demand that labour should have bonus for the year where for that very year capital had not only a reasonable return but much in excess of that."

Against this decision of the Appellate Tribunal an appeal was preferred by the concern before the Supreme Court of India. The Employers' Association of Northern India, Kanpur, an association-member of the A.I.O.I.E., wrote to the Organisation stating that the *Muir Mills case* was the first of its kind which had gone to the Supreme Court and it was likely that the Supreme Court would lay down principles on which bonus could be awarded. In view of the far-reaching effect that this decision might have on industry as a whole, the Association requested the A.I.O.I.E. to intervene and the latter accordingly applied for intervention which was granted by the Supreme Court.

The Supreme Court (1955 I LLJ 1), towards the end of 1954, negativing the award of the Labour Appellate Tribunal, pointed out:

"The considerations of social justice imported by the Labour Appellate Tribunal in arriving at the decision in favour of the respondent were not only irrelevant but

untenable. Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations. It is also significant to note that even while importing considerations of social justice the Labour Appellate Tribunal was oblivious of the fact that it was by their own acts of indiscipline and strike that the workers of the appellant company themselves contributed to the trading losses incurred by the appellant and it hardly lay in their mouth then to contend that they were none the less entitled to a payment of bonus commensurate with the dividend paid to the shareholders out of the undistributed profits of the previous years."

The Supreme Court ruled, "Linking of bonus to dividend would obviously create difficulties. Because if that theory was accepted a company would not declare any dividend but accumulate the profits, build up reserves and distribute those profits in the shape of bonus shares or reduce the capital in which even the workers would not be entitled to claim anything as and by way of bonus."

About the concept of bonus adopted in the L.A.T. Full Bench Formula, the Supreme Court said:

"It is therefore clear that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss there is no basis nor justification for a demand for bonus. Bonus is not a deferred wage. Because, if it were so, it would necessarily rank for precedence before dividends. The dividends can only be paid out of profits and unless and until profits are made no occasion or question can also arise for distribution of any sum as bonus amongst the employees.

"...The workers not being members of the company would also not have any right, title and interest in the reserves or the undistributed profits which would form part of the assets of the company. ...the mere fact that dividends were declared and paid to the shareholders out of such reserves and distributed profits would not

entitle the workers to demand bonus when in fact the working of the industrial concern during the particular year had showed a loss.

“It has also got to be remembered that the labour force employed in an industrial concern is a fluctuating body and it cannot be predicated of the labour force in a particular year that it represents the past and the present workers, so that it can claim to demand bonus out of the reserve or undistributed profits of the previous years. On the accounts of each year being made up and the profits of the industrial concern being ascertained the workers during the particular year have their demand for bonus fully satisfied out of the surplus profits and the balance of profits is allocated and carried over in the accounts. No further claim for payment of bonus out of those reserves or undistributed profits can therefore survive. To admit the claim for bonus out of the reserves transferred to the profit and loss account would tantamount to allowing a second bonus on the same profits in respect of which the workers had already received their full bonus in the previous year.”

#### *Bonus in Electrical Undertakings*

As regards bonus in electrical undertakings, in *Bombay Suburban Electric Supply Ltd. v. Their Workmen*, the Appellate Tribunal (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) decided on June 27, 1952, that the Full Bench Formula could not be made applicable to the concern, as its profits were controlled by a special statute. Bonus in such a case must come out of ‘clear profit’ in excess of the ‘reasonable return’. The L.A.T. doubted whether it was “possible to inject bonus into the items of expenditure specified in the Schedule VI” to the Electricity Supply Act, 1948. It reversed the decision of the industrial tribunal and reduced bonus from one month’s basic wages to 15 days’ wages as offered by the concern, which the L.A.T. thought was a fair offer and was equal to what the concern had paid as rebate to the consumers. (27-6-52, 1952 II LLJ 195) A similar opinion was given by the Bombay Bench, (Shri Lakshmana Rao and Shri Jeejeebhoy) in *Ahmedabad Electricity Company v. Their Workmen* decided by the

L.A.T. in September 1952. (1952 II LLJ 623)

In the dispute between *Calcutta Electricity Supply Corporation Ltd.* and their workmen, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter), while holding that the Full Bench Formula could not be applied "in its fullest extent" to the case due to statutory restriction on profit-making by an electrical concern, awarded additional bonus to the workmen, i.e., operatives and clerks, at the rate of one month's average basic wages, after assessing the financial position of the concern. (30-11-51, 1952 LAC 280)

**WAGES, DEARNESS ALLOWANCE,  
DISMISSAL & REINSTATEMENT**

*The Award Concerning Buckingham and Carnatic Mills*

A very important award by the L.A.T. (Calcutta Bench, Shri Majumdar, Chairman; Shri Mitter; and Shri Mathur) was given on 27th June, 1951, in the dispute between *Buckingham and Carnatic Mills Ltd.* and their workers. It said:

"The Fair Wages Committee in dealing with the question of wages came to the conclusion that the wages of an industrial worker must be such as would enable him to have not merely the means for bare subsistence of life but also for the preservation of his efficiency as a worker. For this purpose he must have means to provide for some measure of education, medical requirements and amenities. *This is the minimum which he must have irrespective of the capacity of the industry or of his employer to pay.* Thus the floor level of wages is to be determined keeping in view those considerations. The upper limit of wages must be set by what may be called the capacity of the industry to pay, not of a particular unit thereof, but on the industry-cum-region basis. . . . Between these two limits fair wages will depend..." "*In our opinion, the question of wages in the case before us, generally speaking, has to be approached in the manner thus indicated.*" (Italics by the author)

The L.A.T. recalled that in *The Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh* (1950 II LLJ 1247)

it had pointed out that no precise and general Formula for determining the amount of bonus could be laid down which would apply to all industries or a particular type of industry. The L.A.T. felt that the amount of bonus in the instant case would have to be determined either according to the Full Bench Formula or on the basis of production as was adopted for the sugar industry of Uttar Pradesh and Bihar or by linking it to dividend on ordinary shares. The L.A.T. reversed the award of additional 5% bonus by the lower tribunal for 1948 on the ground that depreciation at the statutory rate needed to be supplemented by a rehabilitation fund to meet fully the increased replacement cost and that the amount of Rs. 15 lakhs set apart in 1948 as additional reserve by the concern was not excessive. The L.A.T. added: "It is recognised that the ordinary depreciation fund would be inadequate for that purpose for the costs of machines and materials have gone up about three times the pre-war level. . . . The actual necessity both as regards speed and amount of replacement in particular years would be governed by the requirement of the factory." Having regard to long-standing practice in the company of linking bonus to dividends paid to ordinary shareholders, the L.A.T. allowed bonus for 1948 at 15% of the total basic wages—a rate double the rate of dividend paid on ordinary shares. It turned down the claim for linking bonus to total emoluments on the ground that it would give the lowest paid worker a bonus about  $2\frac{1}{2}$  times more than what he would get if bonus were calculated on basic wage—a claim which the L.A.T. thought was "an impossible claim". The Appellate Tribunal rejected the contention that the managing agents' commission had been taken at an excessive figure and held that it had to be allowed at the rate provided for in the contract.

Noting that the (first) Central Pay Commission had nowhere recommended dearness allowance at such rate as to neutralise fully the rise in the cost of living even in regard to low-grade employees, the L.A.T., in the same award, rejected the demand of the workers for increase in dearness allowance for purposes of cent per cent neutralisation of the rise in the cost of living.

On the question of powers of an industrial tribunal to interfere with the punishment awarded by the management to the worker, the L.A.T. observed as follows:

"The power of management to direct its internal administration, which includes the enforcement of discipline of the personnel, cannot be denied; but with the emergence of modern concepts of social justice, that an employee should be protected against vindictive or capricious action on the part of the management which may affect the security of his service, this power has to be subjected to certain restrictions but at the same time undue interference by a tribunal with administration and management should not be encouraged. It would thus be open to the tribunal to examine the findings of the management on the charge of misconduct to assure itself that there is evidence to support the finding and that the decision of the management is a *possible* view on the evidence before it ...

"The result, therefore, is that the decision of the management in relation to the charges against the employee will not prevail—if

- (a) There is want of *bona fides*, or
- (b) It is a case of victimisation or unfair labour practice or violation of the principles of natural justice, or
- (c) There is a basic error on facts, or
- (d) There has been a perverse finding on the materials.

"If after scrutiny on the aforesaid lines it is found by the tribunal that it ought not to interfere with the findings of the management that the charge has been proved, the tribunal must next consider whether it should interfere with the punishment. The management, with the knowledge and experience of the problems which confront it in the day-to-day work of the concern, ordinarily ought to have the right to decide what the appropriate punishment should be, but its decision is liable to be revised if the tribunal is of opinion that the punishment 'is so unjust that remedy is called for in the interest of justice'. It must, however, be remembered that it is essential that the matter should not be viewed altogether subjectively from the point of view only of the employer or employee but also objectively in the

interest of industry for bringing about a harmony in the relationship between the two...

"The normal rule in such cases should be reinstatement; but in so ordering, the tribunal is expected to be inspired by a sense of fair play towards the employee on one hand and considerations of discipline in the concern on the other. The past record of the employee, the nature of his alleged present lapse, and the grounds on which the order of the management is set aside are also relevant factors for consideration. It is not possible to lay down rules which could be regarded as exhaustive on the subject. Each case would have to be considered on its merits, but within the general framework of the principle indicated above." (27-6-51, 1951 II LLJ 314)

### *Wages*

The basic principles enunciated by the L.A.T. in *Buckingham and Carnatic Mills case* were followed up by it in the subsequent awards. In the dispute between *Rajamani Transports Ltd.* and their workmen, the Appellate Tribunal (Madras Bench, Shri Lakshmana Rao and Shri Mathur) upheld the decision of the lower tribunal that paying capacity was irrelevant in the matter of minimum wage fixation. It said : "The workers must get the minimum wages as are being paid in the local area and if the Company cannot afford to do so it has no right to exist." (24-8-51, 1951 II LLJ 624) In *J.K. Iron and Steel Co., Ltd., Kanpur and others v. Iron & Steel Mazdoor Union*, the L.A.T. (Shri Mathur and Shri L.K. Jha) stated that in fixing the minimum wage the capacity of any concern had not to be taken into account. If a concern was not in a position to pay even the 'minimum basic wage', it would have no right to continue. (24-10-52, V FJR 105)

The general approach of the L.A.T., in its awards during the period under review, was that basic wages were a long-term arrangement and should remain unaltered for a reasonable period unless substantial changes intervened; that the capacity of the industry to pay was the important factor in increasing wages to the fair wage level and that such an increase had to be viewed in the context of the total emoluments earned by

the workers.

#### *Dearness Allowance*

The stand taken by the L.A.T. on claims to an increase in dearness allowance as evidenced by its awards during the period under review was that the existing financial condition of the concern and the level of the basic wages were relevant factors in deciding the issue. In concerns where the basic wages were low, a higher scale of dearness allowance might be allowed. The L.A.T. was emphatic that the demand for a 100% neutralisation of the rise in the cost of living could not be conceded, and that the question of an increase in dearness allowance should not be re-opened after short intervals for minor variations in the cost of living.

#### *Dismissal, Reinstatement and Retrenchment*

In its awards relating to misconduct, dismissal and reinstatement of employees, the L.A.T. generally upheld the principles laid down by it in *Buckingham and Carnatic Mills case*. It ruled that the tribunal should not intervene in matters of disciplinary action taken by the management except where such action was *mala fide* or punishment was too severe or was not in accordance with the prescribed procedure. It emphasised that the matter has to be viewed not only subjectively from the point of view of the employer and employee but also objectively in the interest of peace, discipline and good management in the industry. It affirmed that while reinstatement should be the normal practice for wrongful dismissal, compensation might be allowed in cases where the management could substantiate objectively that it had lost confidence in the employee. In several cases, the Appellate Tribunal conceded that strike was a legitimate weapon for the workers to enforce their demands and that the employers should not be allowed the freedom to dismiss an employee even for participation in an illegal strike unless the workman was guilty of any act of violence, in intimidation or any other subversive activity.

The L.A.T. ruled, in one case, that the right to strike-pay depended upon whether or not the strike was illegal. (Shri Majumdar and Shri Ghulam Hasan, 27-6-52, 1952 II LLJ 635) In another case where the strike was legal, the L.A.T. awarded

strike-pay, setting aside the award of the lower tribunal, on the ground that the strike was not absolutely unjustified. (Shri Mitter and Shri Mathur, 12-9-52, 1953 I LLJ 49)

In an earlier appeal, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that workers were not entitled to reinstatement on the termination of an illegal strike. (15-5-51, 1951 II LLJ 621) In a subsequent case, the L.A.T. said that the tribunal would be justified in ordering reinstatement in appropriate cases relating to dismissal for participation in an illegal strike. (Shri Majumdar and Shri Mitter, 22-9-52, 1952 II LLJ 648)

In one case, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) set aside the lower tribunal's award for compensation on the ground that as there had been no victimisation or unfair labour practice and retrenchment was justified, the workmen were not entitled to any compensation, apart from one month's wages in lieu of notice. (21-8-51, 1953 I LLJ 67) However, in another case decided in November 1951, the L.A.T. (Calcutta Bench, Shri Mitter and Shri Mathur) awarded compensation to the employees for justified retrenchment. (6-11-51, 1952 I LLJ 199) This view was repeated in a case decided by the L.A.T. in January 1952 (Calcutta Bench, Shri Majumdar and Shri Mitter, 2-1-52, 1952 I LLJ 796), as also in several other subsequent cases.

### *Gratuity*

In its awards concerning gratuity, the L.A.T. ruled that gratuity was a long term arrangement, and it depended upon the general financial stability of the undertaking. It felt that schemes of gratuity should not be disturbed unless they had been tried for a sufficiently long time. It added that if the finances of the concern permitted, both gratuity and provident fund benefits should be allowed, as gratuity would afford additional relief in the case of those who were to die or retire after short service with meagre provident fund benefits.

### *Definition of Workman*

The L.A.T., in some awards during the period under review, ruled that foremen were not workmen under the Industrial Disputes Act.

### 3. THE PLANNING COMMISSION DISFAVOURS PROVISION FOR APPEALS

The *Draft Outline of the First Five Year Plan*, issued by the Planning Commission in July 1951, enunciated what later on came to be termed as the 'Nanda' approach to the industrial relations policy of the Government.<sup>1</sup> One of its basic tenets was re-organisation of machinery for settlement of industrial disputes to ensure social justice, without any provision for appeals against the judgement of the industrial court or tribunal. The *Draft Outline* said, "The employer-employee relation has...to be conceived as a partnership in a constructive endeavour to promote the satisfaction of the economic needs of the community in the best possible manner. The dignity of labour and the vital role of the worker in such partnership must be recognised." The *Outline* emphasised that it was necessary to empower labour courts to take cognizance and dispose of any complaints relating to working conditions, health, safety, welfare and kindred matters. Reference of disputes concerning such crucial questions as wages, hours of work, rationalisation schemes, etc., should, as far as possible, be left to be settled by conciliation or voluntary arbitration. The State might, however, have to refer such disputes for compulsory arbitration in the absence of a voluntary submission.

The *Outline* conceded the workers' right to direct action for the improvement of their conditions, but added that in an economy, which was organised for planned production and

1. Shri Gulzari Lal Nanda, M.A., LL.B., began his career as Professor of Economics, National College, Bombay; was Secretary, Textile Labour Association, Ahmedabad, 1922-46; Member, National Planning Committee; Secretary, Hindustan Mazdoor Sevak Sangh; was largely instrumental in organising, in May 1947, the Indian National Trade Union Congress.

Shri Nanda was Parliamentary Secretary, Government of Bombay, Labour and Excise, 1937-39; Chairman, Bombay Housing Board, 1946-48; Minister for Labour and Housing, Government of Bombay, 1946-50; Government delegate to the 30th Session of the International Labour Conference, Geneva, June-July, 1947; Deputy Chairman, Planning Commission, 28th March 1950-24th September 1951; Deputy Chairman, Planning Commission and Minister of Planning, 24th September 1951-7th June 1952; Minister of Planning, Irrigation and Power, 7th June 1952-17th April 1957; Minister of Labour and Employment and Planning since 17th April 1957 to date.

distribution, and aim at the realisation of social justice and welfare of the masses, strikes and lock-outs had no place. India was moving in such a direction and she was also passing through a period of economic and political emergency. Taking the period of the next few years, the regulation of industrial relations in the country had to be based on these two considerations and it was incumbent on the State to arm itself with legal powers to refer disputes for settlement by arbitration or adjudication if efforts to reach an agreement by other means were to fail.

The *Draft Outline* favoured a wage freeze except in case of abnormally low rate of wages and for removal of anomalies. It also urged that the proper principles, norms and standards for determination of bonus, etc., should be worked out by a tripartite body consisting of representatives of employers, workers and Government.

The *Draft Outline* recommended, "The machinery and procedure relating to compulsory arbitration and adjudication of disputes should be so designed as to secure the essence of a fair settlement based on the principles of natural and social justice with the minimum expenditure of time and money. To achieve the aforesaid aims, statutory provisions in this connection should be framed in accordance with the following principles:

'Legal technicalities and formalities of procedure should be reduced to the minimum...'

'Selection, recruitment and training of the personnel of the courts or tribunals should be carried out with a view to securing competent disposal of the question coming up before them...'

'There should be no appeal from decisions of an industrial court or tribunal, barring the very exceptional case of a decision which may be found to be perverse or against the principles of natural justice.'

#### 4. THE WORKERS' ORGANISATIONS DEMAND ABOLITION OF THE L.A.T.

*Dabate on Demands for Grants of  
the Labour Ministry of 1951-52*

During the debate, in Parliament, on the Demands for Grants of the Ministry of Labour, for the year 1951-52, Shri Hariharnath

Shastri (General Secretary, I.N.T.U.C.) said on April 5th, 1951 that the year before he had opposed the legislation for the establishment of the L.A.T. because he was convinced that in the long run the L.A.T. would delay matters and would prove detrimental to the interests of the workers. The L.A.T. had since been given a fair trial. Shri Shastri admitted that in certain cases the awards of the L.A.T. had gone in favour of labour, but taken as a whole the L.A.T. had caused inordinate and unnecessary delays and it was causing increased hardship to the workers in most of the States. Shri Shastri affirmed that labour organisations had definitely come to the conclusion that if the L.A.T. were to stay, its scope must be restricted, and that the L.A.T. in the existing form should be abolished.

Shri Jagjivan Ram, Minister of Labour, in reply, pointed out that there had not been so much delay as it was sought to be made out. The Tribunal had begun functioning from 15th August, 1950; and during the period 15th August 1950 to 15th March, 1951, 376 appeals had been filed, 168 disposed of and 208 were still pending. Applications filed had been 289, out of which 201 had been disposed of and 88 were pending. The Tribunal had been asked by Government to dispose of the appeals and applications with utmost despatch and expedition. The Labour Minister added that it was difficult to think of scrapping the L.A.T.; it had come to, and it would, stay, as it was doing some useful work in the interest both of industry and labour.

#### *The Attitude of the I.N.T.U.C.*

The Working Committee of the I.N.T.U.C., at its meeting held at New Delhi on April 15-16, 1951, with Shri Khandubhai K. Desai, President of the I.N.T.U.C., presiding, noted with concern that the faith of the working class in the method of conciliation and arbitration had received a rude shock from the manifest tendency on the part of the employers to refer most of the disputes to the L.A.T. and to utilise the High Courts and the Supreme Court for the purpose of delaying justice. From experience gained in various parts of the country, about the working of the appellate tribunal, the Committee felt certain that any further continuance of the appellate machinery would not only be detrimental to the interests of the workers but would also hamper the growth of peaceful industrial relations in the country.

The Committee urged the Government to abolish the L.A.T. and to amend the Constitution of India in order to ban reference of industrial disputes to the High Courts and the Supreme Court.

The General Council of the I.N.T.U.C., at its Second Session (July 28-29th, 1951), held under the president ship of Shri Khandubhai K. Desai, affirmed the views on the L.A.T. expressed by its Working Committee. It further felt that the industrial tribunals should include persons of integrity and ability from outside the judiciary, as the appointment of judicial personnel only on the tribunals had led to too much of a legalistic approach to the problems of industrial relations, frequently at the cost of social justice and industrial peace.

*The Textile Labour Association Pleads for  
Revision of the Full Bench Formula*

The L.A.T. awards in *The Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh* (1950 II LLJ 1247) and *Textile Labour Association v. The Ahmedabad Millowners' Association, Ahmedabad and others* (1951 II LLJ 354) led to considerable resentment among the workers of the textile mills in Bombay and Ahmedabad which had been exempted from paying bonus due to loss or inadequate profits or which were allowed to appear separately. The workers' organisations in Bombay and Ahmedabad felt that the Full Bench Formula really meant lower no bonus for the working class due to excessive 'prior charges' it allowed in the determination of the "available surplus" for bonus. The lead in taking up the workers' case was given by the Textile Labour Association (T.L.A.), Ahmedabad.

At its meeting held on 29th July, 1951, with Shri Gulzari Lal Nanda in the chair, the Joint Board of Representatives of the T.L.A.<sup>2</sup> passed a Resolution stating that the L.A.T. had given

2. The T.L.A. is a federation of craft unions. In 1951 it had a membership of about 80,000 out of 120,000 employees in 65 textile mills in Ahmedabad. It is a "Representative Union" under the Bombay Industrial Relations Act and is recognized by the Ahmedabad Millowners' Association. The T.L.A. believes in Gandhian ideology and voluntary arbitration; its leaders were the main guiding force behind the formation of the I.N.T.U.C. in 1947. The Joint Board of the T.L.A., consisting of representatives of the affiliated unions, is responsible for matters of common interest and for electing the office-bearers of the T.L.A.

up "the principle of deciding industrial questions affecting the entire industry having regard to the industry as a whole," by permitting separate appearances to individual mills in Bombay and Ahmedabad and by awarding bonus on the trading results of individual mills. In the case of *Bombay Textile Mills*, the Resolution pointed out, the L.A.T. had exempted some mills from paying bonus on the ground of losses shown in the balance-sheets. The L.A.T. had further exempted three mills from payment of bonus even though balance-sheets showed profits, by allowing "unreasonable" prior charges. The Resolution noted that the 1949 Bonus Award for Ahmedabad by the L.A.T. had led to great discontent among the textile workers in Ahmedabad. The loss-making mills had secured an advantage. The Resolution urged the Government of India to take the following remedial measures:

- (1) The industrial disputes law should be amended to provide that all employers in an industry would be represented by a recognised employers' association in the region, just as the workers employed in an industry were represented only through a Representative Union. No mill should be permitted to appear by itself before the adjudicator.
- (2) Courts and tribunals should be empowered to pool the surplus profits of all mills in an industry and to award bonus to all the workers engaged in it, on a uniform basis.
- (3) The rate of the managing agents' commission was very high. A reasonable standard must be fixed for it.
- (4) The Industrial Court had been functioning in the State of Bombay for a number of years, and the L.A.T. was unnecessary, as appeals to it often led to delay and uncertainty. The Bombay State should be excluded from the jurisdiction of the L.A.T.
- (5) ". . . Government should appoint a Committee of Inquiry to find out the causes of losses, the defects in management, etc., the responsibility of workers for losses, if any, and suggest ways and means to improve the management."

Development Committee on Industries (Labour),<sup>3</sup> Government of India, (Camp Bombay), the Textile Labour Association, in a letter dated 31st July, 1951, said,

“the (L.A.T. Bonus) Award (for Ahmedabad) is based on almost inexplicable and irrational grounds. The officials of the Textile Labour Association find it difficult to justify the Award before the workers. This naturally undermines the whole fabric of industrial relations, jeopardizing the peace in the industry. ...a breakdown of industrial peace in Ahmedabad, on this ground, is bound to have far-reaching repercussions, because Ahmedabad sets the example...

“...In Ahmedabad when the Bonus case reached the industrial Court for hearing it was found that ten mills had shown losses in their balance-sheets. The T.L.A. asked for inspection of the books and accounts of these mills to see whether losses could be shown due to ‘mismanagement or fraud’. The Association had to make this request as the Court of its motion did not undertake to make such an inquiry. The Millowners vehemently opposed the T.L.A. demand for inspection, but the Court granted it. The mills appealed to the Labour Appellate Tribunal, but their appeals were dismissed on a technical ground.

“...The standards determined by the Tribunal for ‘prior claims’...are so excessive, that if applied to each individual mill, quite a large number of mills may find no surplus to pay bonus. No such distinction was hitherto made between one mill and another and bonus was determined having regard to total profits of the industry in the centre. No mill in the past ever expected or even demanded such an exemption and bonus was treated all along as ‘deferred wages’ payable for the year at a uniform rate.

“The Labour Appellate Tribunal, in exempting these mills, had laid down a dangerous principle, viz., ‘no mill which cannot take out statutory depreciation and satisfy

3. The Committee was established by the Development Council of Industries, which was set up in December 1950 by the Ministry of Commerce and Industry.

other prior claims can be asked to pay bonus'. Even the mills did not believe that such a principle would be fair and, therefore, many other mills which under the above formula could have claimed exemption did not claim it, but this year every such mill is bound to ask for exemption and get it."

The T.L.A. added:

"The Court had exempted loss-making mills from payment of bonus; the (Appellate) Tribunal by its decision in the appeals has extended that exemption even to meagre profit-making mills... The question then arises as to what is a loss-making mill and why losses arise in case of some units only, especially when cloth prices for cotton are fixed, wages are standardized and other expenses are common to all concerns. The onus should obviously be on the mills to show why losses or meagre profits occurred..."

"...Is it fair to deprive workers of such mills from receiving their bonus? If workers are not responsible in any way for...losses, why should they be penalized?... Even in future if any mill is to be exempted on the ground of losses or meagre profits, we consider that a provision should be made in law enabling the Court to direct that the amounts of bonus to be distributed may be pooled together and distributed equally amongst the workers if the workers are willing..."

Discussing the unreasonableness of "prior charges", the T.L.A. pointed out that the managing agents' commission had been considered both by the Court and Appellate Tribunal as a contractual obligation and allowed in full. This had created a special difficulty for Ahmedabad, where agents were charging commission at  $3\frac{1}{2}\%$  on sales. (In Bombay, commission was charged at 10% on gross profits.) As a result of such a high incidence of managing agents' commission in Ahmedabad, the volume of profits appeared to be smaller than what it would have been if the commission was charged as percentage of profits. Further, the Industrial Court and the Appellate Tribunal had allowed a return of 6% on share capital including bonus shares as a reasonable prior charge. The T.L.A. felt that this was

unfair to the workers whose real wages fell "far short of a living wage".

The T.L.A. added that it had urged before the Industrial Court and the Appellate Tribunal that depreciation actually charged should be taken as a prior claim on profits. The Court and the Tribunal, however, decided in favour of depreciation 'due' and 'as permissible under the Income-Tax Rules.'

With regard to rehabilitation charges, the T.L.A. pointed out that the Industrial Court had allowed the deduction of the accumulated depreciation fund, machinery renewal fund and reserve funds of the industry except funds which were in the nature of liability funds. However, the L.A.T. had in appeal, ruled that the sum remaining after deducting the value of gross block from capital, depreciation funds and reserves (i.e., net surplus) alone would be available for purposes of replacement, the remaining amount having been sunk in building up the block or invested elsewhere. This, the T.L.A. thought, was "a wrong calculation", as depreciation fund was always built up with the specific purpose of replacing worn-out machinery, and even if it was invested elsewhere for the time being, it could not be said that it was not available. The T.L.A. urged that expansion of the industry should be made from new capital and not from funds. In the initial stages, when there were no funds, working capital would be raised by the concern from loans and deposits. With the accumulation of profit such loans would be returned and funds used in its place; but this could not be construed to mean that the existing funds were not available for purposes of rehabilitation, and would have to be collected afresh. The T.L.A. asked, "What guarantee is there that even the annual allocation of replacement reserve from profits will not be invested somewhere, and the same argument made again?"

Referring to the difficulties experienced by the workers in the Bombay State after the establishment of Labour Appellate Tribunal, the T.L.A. stated,

"From 1939 to 1949, the orders of the Industrial Court were final and there was no provision of any appeal from the decision of the Industrial Court except to the High Court under Letters Patent. Since the establishment of Labour Appellate Tribunal, however, there has been a growing tendency for appeals even in minor

matters leading to inevitable delay in disposal of disputes. Prompt decisions are an essential part of the administration of the Industrial Law, and whatever factors nullify these objects ought to be removed. The Industrial Court is essentially a Court of Arbitration and it is not proper to provide for appeals against the award of arbitrators. We, therefore, request the Committee to recommend to the Government of India not to apply the provisions of the Labour Appellate Tribunal Act to the State of Bombay."

The communication of the T.L.A. concluded:

"...We know that as a result of the good offices of the Development Committee, a tripartite agreement has been reached regarding the future pattern of industrial relations. Taking cognizance of the legalistic administration of the industrial disputes, the Committee has found out a way and indicated it in the following terms:

"...industrial arbitration differs fundamentally from the ordinary administration of justice. In the latter case, the law of the land has pre-determined the rights and obligations of the parties; and the courts have only to interpret and apply the provisions of the statute. A wide element of discretion, however, rules the decisions of Industrial Tribunals, because there are no established criteria for settling the issues which arise before them. It is possible that case-law on these points will grow in course of time, but in matters affecting large economic interests it would be a very unsatisfactory procedure to leave the 'norms' and the guiding policy to be settled by such a process of trial and error. The resolution on Industrial Truce adopted at the Industries Conference in December 1947 visualizes the establishment of a machinery for determination of 'norms' and 'standards' which may govern the mutual relations and dealings between the employers and employees and settlement of industrial disputes. The most suitable machinery for the purpose can only be a tripartite body consisting of representatives of employers, employees and Government. It may be expected that

agreement will be reached on many contentious matters, but where this is not possible, the Government may, with such expert assistance and judicial advice as is needed, itself arrive at decisions. These agreements or decisions may, according to the nature of the case, be issued as directives binding on the Courts or the Tribunals or embodied in legislation.

“This is the only ray of light for us in the present predicament. We think an opportunity has arisen when the Development Committee should assist the industry and labour in Ahmedabad and thereby render inestimable service to the entire country and utilize the tripartite machinery visualized in the aforesaid agreement. This should be done at once since the situation does not brook any delay.”

The T.L.A., in a letter dated 10th August, 1951, addressed to the Chairman, Joint Consultative Board of Industry and Labour,<sup>4</sup> reiterated its views on the issue of “prior charges” as follows: (1) In the existing social order, the workers were obliged to forego some of the necessities of life to maintain employment; thus they served the society, constantly sacrificing to the extent that their actual wages were below the living wage standard. A worker’s claim to bonus should, therefore, be considered as important as other matters, viz., (managing) agents’ commission, depreciation, dividend, etc. (2) The actual depreciation charged by the industry was generally less than the amount permissible under the Income-Tax Rules. A return of 4% on gross block would be an adequate depreciation as a ‘prior charge’. (3) A

4. The Joint Consultative Board is a tripartite body at the national level, originally set up in July 1951, on the recommendation of the sub-committee on labour of the Development Council of Industries. Its objects are: to promote agreements between industry and labour, to follow up and assist in their proper implementation, and to examine general questions relating to industrial relations (e.g., norms and standards for determination of wages and bonus, association of workers with management, training of retrenched workers, etc.). The Board initially consisted of three representatives each of the more important national organisations of the workers and the employers, with a Government representative as the Chairman, and was appointed for a period of two years. The Board reconstituted itself in 1954 on a purely non-official (and tripartite) basis so as to enable it to serve its original purpose more effectively.

reserve for rehabilitation, even if it were proved to be necessary, should be allowed only after making provision for bonus; bonus was essentially a deferred wage. (4) The depreciation fund and reserves might be utilized as working capital but it could not then be contended that these funds would not be available for replacement of machinery. (5) As the working capital was composed of the profits of the industry itself and owned by the industry, no return need be calculated on it. Whatever remained after payment of taxes and dividends and bonus could be utilized by the industry for its own purpose. (6) After commission, depreciation, dividend and a minimum bonus of 2 months' wages had been paid, if the surplus profits were large enough, there should be room for claim for a higher bonus after making some provision for reserves for replacement. (7) No special allocation for rehabilitation was needed. To set the controversy on this issue at rest, the Government of India should institute a special inquiry "with the help of technical experts but without any...decisive guidance", as it was highly improper to include the cost of replacement in the price to be paid by a consumer or utilise it against the workers' claim to bonus. The T.L.A. urged that for ensuring social justice the Joint Consultative Board should institute such an enquiry for evolving suitable norms for bonus at an early date.

*The Millowners' Associations of Ahmedabad and Bombay Oppose the T.L.A. Proposals*

Referring the proposal of the Joint Board of the Representatives of the T.L.A. that the L.A.T. should have no jurisdiction in Bombay State, the Millowners' Association, Bombay, in a letter addressed in September 1951 to the Secretary, Union Ministry of Labour, drew attention to the "Statement of Objects and Reasons" which was appended to the Bill providing for the establishment of the Appellate Tribunal, introduced in the Central Legislature by the then Labour Minister, Shri Jagjivan Ram. Explaining that the case for the Appellate Tribunal was stronger in Bombay State, where the Bombay Industrial Relations Act was in operation than elsewhere, the Association pointed out that under the Bombay Industrial Relations Act the Representative Union could refer any dispute, which could not be settled by conciliation, to the

arbitration of the Industrial Court. Compulsory arbitration was thus the principal means of settling employer-employee disputes and differences. Whether the dispute was of a major nature or otherwise or whether it was referred to the Industrial Court by Government or the Representative Union, the ultimate repercussions of the Court's decision on the finances of the industry or the unit concerned could not be overlooked. The Association proposed that the Bombay Industrial Relations Act and the Industrial Disputes (Appellate Tribunal) Act should be amended to provide specifically for the following: (a) An appeal to the L.A.T. should be permissible against all decisions of the Industrial Court, regardless of the issues involved. (b) The Industrial Court and the Appellate Tribunal should have at least one member who was a chartered accountant. The Association explained, "The helplessness of the Industrial Court and the Appellate Tribunal in matters connected with company finance and company accounting practice is common knowledge and any decisions they give, based on their imperfect knowledge in these matters, is calculated to inflict incalculable harm on the industry or the unit as the case may be."

The Millowners' Association, Bombay, further urged that for ensuring judicial impartiality, the Industrial Court of Bombay and the L.A.T., which were then functioning under the Labour Department of the Government of Bombay, and the Union Ministry of Labour respectively, should be placed under the respective appellate jurisdiction and superintendence of the High Court of the State and the Supreme Court. The Association recalled that the Income-Tax Appellate Tribunal was originally set up under the Income-Tax Department, but after some time it was made entirely independent of the Department. It was only when the Tribunal became independent that the public had confidence in it; prior to that the Income-Tax Appellate Tribunal was mostly functioning as "the spokesman of the Central Board of Revenue".

Similar views were expressed by the Ahmedabad Mill-owners' Association, in a letter addressed by it in October 1951 to the Secretary, Ministry of Labour. The Association vehemently opposed the suggestion, made by the Joint Board of the Representatives of the T.L.A. in its Resolution of June 29, that the tribunals should be authorized to pool the surplus

profits and "distribute equally the amount payable as bonus". The Association said, "The suggestion virtually amounts to this, that even mills which have made losses should be condemned to pay bonus without demur. A more preposterous suggestion could not have been made. A bonus in such cases must necessarily come out of the paid-up capital of the company, which is not intended by the Articles of Association of the company to be frittered away by payment of bonuses to workers." The Association added that the proposal of the Joint Board was "fraught with insuperable difficulties". A worker normally had to deal with his employers only, and it would be very difficult to make him understand that if he had not received his due share of the bonus, the responsibility did not lie with the employer. The Association emphasised that the proposal, if accepted, would have grave repercussions both in industry and labour; it could not be supported under the existing law. About the L.A.T., the Association observed, "The necessity for a central appellate authority which could hear appeals from various labour courts and tribunals and co-ordinate their activities and lay down uniform standards was felt since long, and by setting up of the Appellate Tribunal, the Government only met the long-felt need. ... Circumstances have testified that the establishment of the Labour Appellate Tribunal is a step in the right direction, especially in the Bombay State wherein the Bombay Industrial Relations Act is in force for a number of years."

The Ahmedabad Millowners' Association repeated the suggestions made by its counterpart in Bombay, namely, an appeal should lie against all decisions of the Industrial Court, regardless of the issues involved, that the Industrial Court and the Appellate Tribunal should have at least one member who was a chartered accountant, and that they should be placed under the superintendence of the High Court of Bombay and the Supreme Court respectively.

#### *The Joint Consultative Board of Industry & Labour Considers Norms for Bonus*

The suggestion made by the T.L.A. that the Joint Consultative Board of Industry and Labour should examine the question of evolving norms and standards for payment of bonus was

discussed at the meeting of the Board held on 29th September, 1951, under the chairmanship of Shri Gulzari Lal Nanda, the then Minister of Planning, Irrigation and Power. In the light of the discussions, the Chairman suggested a tentative formula with the following charges on gross profits in the order shown: managing agency commission (according to the Tariff Board or Company Law Amendment Committee's recommendations); depreciation (according to the Tariff Board formula); 10 per cent for reserves; taxes; a minimum return of 5 per cent on paid-up capital plus reserves, and bonus equal to one month's pay. If any residual surplus was left over after this first distribution, it would be further shared between capital and labour in equal proportions (50:50) as recommended by the Committee on Profit-Sharing, subject to the condition that the labour's share would be limited to a ceiling of three months' pay. The employers' representatives agreed to recommend to their organisations the compromise formula suggested by the Chairman but made it clear that they had no authority to commit the organisations they represented to any definite agreement.

The bonus formula suggested by the Chairman of the Joint Consultative Board was considered by the Committee of A.I.O.I.E. at its meetings held on 10th November and 19th December, 1951. It was also discussed at two joint meetings of the representatives of the All-India Organisation of Industrial Employers and the Employers' Federation of India. It was decided that both the organisations should strongly oppose the proposal of the Chairman of the Joint Consultative Board, because any formula that might be laid down for the distribution of bonus to industrial workers would be tantamount to the introduction of profit-sharing in industry, to which the organisations had all along objected.

In view of the difference of opinion between the employers' and the workers' organisations about the proposal to lay down norms and standards for bonus, the Joint Consultative Board did not pursue the matter further.

*The I.N.T.U.C. Reiterates its Demand  
for the Abolition of the L.A.T.*

The Annual Report for the period October 1950—September 1951 presented by the General Secretary—Shri Hariharnath

Shastri—to the Fourth Session of the I.N.T.U.C. (Ahmedabad, October 23, 1951) noted that the apprehensions expressed by the I.N.T.U.C. in 1950 that the creation of the L.A.T. would lead to further delays in disposal of labour disputes had been justified by the experience gained during the last one year. Apart from delays, the main difficulty about the Appellate Tribunal had been that it was literally guided by the old concepts of written civil law and tied down to the old legal traditions. In a number of cases it had pronounced judgements that had not only jeopardized the interests of the workers but were also bound to have far-reaching repercussions in the field of industrial relations. The I.N.T.U.C. had come to the definite conclusion that the continuance of the Appellate Tribunal, far from improving labour-management relations, was an impediment to industrial peace. Even the saner section among the employers, which at one time had been anxious for its creation, had been forced to revise its opinion.

At its Fourth Annual Session, (Ahmedabad, October 23, 1951), held under the presidentship of Shri Khandubhai K. Desai, the I.N.T.U.C. adopted two Resolutions, concerning industrial relations and industrial tribunals and courts. The Resolutions expressed dissatisfaction with the working of tribunals and courts, their faulty composition and delays in disposal of cases. More important than that, the appellate machinery had almost immobilised all trade union activity concerning industrial disputes. Under the prevailing system of compulsory conciliation and arbitration, disputes generally went under conciliation as soon as notice of the dispute was given. From conciliation the dispute passed on to adjudication and went up to the L.A.T. This took a fairly long time; even after the decisions of the industrial tribunal and the L.A.T., the matter was in many cases taken by the employers to the Supreme Court for a decision on points of law or on constitutional issues. All this took years, and during the pendency of the case no direct action could be taken by the trade unions, as that would be illegal. The settlement of disputes under the existing system had thus become more a matter of skill in the law courts—which was the work of lawyers—, and trade union activity was therefore mostly stifled.

The I.N.T.U.C. Resolution on industrial relations stated that the development of trade union movement during the last

few years had indicated the need for enacting suitable legislation to provide increasingly greater scope for voluntary agreements, in preference to constant recourse to tribunals. Adjudication of industrial disputes, even though it might be inevitable on certain occasions, left behind it a feeling of bitterness and mutual recrimination which was inimical to the growth of industrial peace. The indigenous method evolved by Mahatma Gandhi of negotiations and voluntary arbitration was preferable, as it helped to create goodwill and a spirit of mutual accommodation in both the parties.<sup>5</sup>

The Resolution regarding tribunals demanded that industrial

5. Shri Khandubhai K. Desai, in his Presidential Address to the Fourth Annual Session of the Conference, said: "It must be admitted that the question of industrial relations is a national problem and as such the State has a right and responsibility to adjust the relations between capital and labour in the interest of the community in general. Mahatma Gandhi intuitively knew the soundness of such a system as far back as 1918 and, therefore, advised the employers and workers to adopt a mutually acceptable arbitration machinery, with only moral sanction behind it to implement the decisions and awards of this body. According to this concept the arbitration machinery would reflect the dynamic public opinion in any society...One cannot lay down hard and fast rules which may result in adherence to dry dogmas in industrial relations which are essentially human and, therefore, require to be adjusted according to the evolution of social order. I must state with all the emphasis at my command that industrial relations should, as a general rule, be settled and adjusted by the parties concerned without any interference from the State. Any strike or cessation of work resulting from strained industrial relations is a symptom of unhealthy growth of self-importance and dictatorial psychology on either side."

The Gandhian labour ideology had a decisive influence in shaping the aims and objectives of the Indian National Trade Union Congress when it was set up in May 1947. The emphasis on arbitration by the I.N.T.U.C. was derived from the successful experiment in voluntary arbitration by Mahatma Gandhi in 1918 in an industrial dispute between the Millowners' Association, Ahmedabad, and its textile workers during which had emerged an important union—the Ahmedabad Textile Labour Association. Mahatma Gandhi recommended that all disputes should in future be settled amicably by arbitration. His ideal was that "capital and labour should supplement and help each other; they should be a great family living in unity and harmony, the capitalists being trustees for the welfare of the workers". He further held that it would be most dangerous to make political use of labour until labourers could understand the political conditions of the country and were prepared to work for the common good.

courts and tribunals should follow a very simple and summary procedure, that the composition of the tribunal or the court should include, besides a judicial member, persons who possessed requisite knowledge of the working of the industry concerned and who understood the workers' requirements and psychology, and that the decisions of tribunals must be based on the principles of social and natural justice and should be non-appealable.

The General Council of the I.N.T.U.C. reiterated, at its Tenth Session held at Bangalore on April 27-28, 1962, under the presidentship of Shri Khandubhai K. Desai, that the Appellate Tribunal should be abolished and industrial tribunals must be excluded from the jurisdiction of the High Courts and the Supreme Court.

#### *The Reaction of the H.M.S.*

The Hind Mazdoor Sabha, at its Third Annual Convention held in Bombay from 28th April to 1st May, 1952, viewed with concern the increasingly dilatory, complicated and expensive character of the machinery for the settlement of industrial disputes set up under the Industrial Disputes Act, 1947, and the various State enactments of a similar nature. It felt that time was of the essence in the settlement of industrial disputes and that "justice delayed is justice denied". The Sabha noted that the system of compulsory adjudication had given no satisfaction to the workers and had obstructed the promotion of internal settlement of disputes and the development of trade unions. It had frequently led to long delays which had become more pronounced since the establishment of the Labour Appellate Tribunal. The H.M.S. was of the view that the Appellate Tribunal had served no useful purpose and it deserved to be scrapped as early as possible. The whole machinery of conciliation and adjudication required to be overhauled with a view to encouraging internal settlements and combating the tendency that had developed amongst the workers to look up to courts and lawyers.

#### 5. SHRI GIRI ENUNCIATES A NEW APPROACH

After the first General Election, Shri V.V. Giri took over in May 1952 as Labour Minister of the Government of India.<sup>6</sup> In reply

6. Shri V.V. Giri, Barrister-at-Law (Honours) (National University of

to the debate on the Labour Ministry's Demands for Grants for 1952-53 in the House of the People, Shri Giri said on June 19th that if labour were to improve its position, it must organise itself into strong, reasonable, democratic and well-organised trade unions. Shri Giri felt that internal settlement of disputes through bipartite and tripartite agreements was always better than an external settlement imposed by a third party. He recalled that in the days of British bureaucracy as a leader of the railway labour movement he had always insisted that there should be a joint standing machinery at all levels, from the district level to the Railway Board, and a tribunal for the settlement of dispute in cases of disagreement. He was glad to find that this demand had been accepted by the Government of (free) India.

Regarding the Labour Relations Bill and the Trade Unions Bill, which had been introduced in Parliament early in 1950 and had since lapsed, Shri Giri stated that in view of the strong opinions for and against their provisions, he proposed to issue a questionnaire, inviting views of the public, the employers and the different sections of the labour movement. He added that fresh legislation would be initiated after giving proper consideration to the replies received to the questionnaire.

In a broadcast talk on June 28th, Shri Giri reiterated his belief in direct negotiation and settlement between the parties as the only way to healthy and lasting peace in industry, and announced that it would be his constant endeavour on the one hand to bring the employers and the employees together, so that they might see each other's point of view more clearly than they would otherwise and, on the other, to impose restrictions and restraints, when unavoidable, in a manner most acceptable

Ireland), joined trade union movement in 1922; was General Secretary and President of All-India Railwaymen's Federation for over seven years; twice President of All-India Trade Union Congress, in 1926 and 1942; Workers' representative at the Second Round Table Conference, London, 1931; Member, Central Legislative Assembly, 1934-37; Convener, National Planning Committee, 1938; Minister of Labour, Industries and Co-operation in the first Congress Ministry in Madras State, 1937-39; and Minister of Labour, Industries, Commerce and Co-operation in Madras Government, 1946-47; High Commissioner for India in Ceylon, 1947-51; Member, Lok Sabha, 1952-57.

Shri Giri resigned as the Union Labour Minister in September 1954; was Governor of U.P. from 1957 to 1960; and has been Governor of Kerala since July 1, 1960.

to the parties and in full consultation with them.

#### 6. THE EMPLOYERS INSIST ON PROVISION FOR APPEALS

The All-India Organisation of Industrial Employers, in its letter of July 24, 1952, to the Chairman of the Planning Commission, took objection to the recommendation, made in the Draft Outline of the First Five Year Plan, to the effect that there should be no appeal from the decisions of an industrial court or tribunal, barring the very exceptional case of a decision which might be found to be perverse or against the principles of natural justice. The A.I.O.I.E. said that the Planning Commission's clarification that this recommendation had been made with a view to persuading labour to agree to voluntary arbitration as a method of settling disputes and to give up the right to strike was not convincing, because compulsory arbitration had been prevalent in India for quite a long time past and labour had not given up the right to strike; neither had it refrained from making use of this weapon as often as it chose. A large number of labour laws had been enacted during the last few years but the case law in labour legislation had as yet not developed sufficiently. Further, the personnel of the labour courts and tribunals were not always adequately experienced in labour matters. The jurisdiction of the tribunals was also not well defined and they had been making awards even against Standing Orders and contracts of employment in the name of maintaining harmonious relations between management and labour. The Organisation urged that in the circumstances it was absolutely essential that there should be provision for appeal against the decisions of courts and tribunals on questions of law as well as fact.

#### 7. CONSULTATIONS WITH EMPLOYERS' AND WORKERS' ORGANISATIONS

In July 1952, the Ministry of Labour, in implementation of the promise given by Shri Giri in the Budget debate in June that year, issued a comprehensive Questionnaire on Industrial Relations for eliciting public opinion. Copies of the Questionnaire were also sent to the State Governments and the central organisations

of the employers and the workers. Question No. 19 related to the basic principles which should underlie industrial relations in an economy for planned production. Question No. 36 sought to elicit views whether the Appellate Tribunal should, among other authorities, be retained or abolished and for what reasons. The replies received from the workers' organisations were as follows:

*I.N.T.U.C.*

The I.N.T.U.C. said: "We recommend the elimination of the L.A.T. as we are against any provision for appeal... Experience has shown that it has resulted in more delay in securing awards and more complications instead of co-ordination and uniformity. Even the two Benches of the Appellate Tribunal have given different judgements; the establishment of the L.A.T. has reduced the status of the Industrial Court and the Tribunals and legal technicalities rather than merits have assumed greater importance."

The I.N.T.U.C., in reply to the question about the basic principles, stated that provision for conciliation and compulsory arbitration should be restricted to cases where all voluntary efforts had failed and where a strike or lock-out was not in the interest of the community. "Trade Unions, which provide for arbitration in their constitutions, should be provided with facilities of automatic reference to arbitration by law even though the other party may not be willing. ... Arbitration may have to be made compulsory in certain cases in spite of the wishes of the parties, in cases where Government in their discretion consider it to be a proper case for intervention in the interest of the community or maintenance of peace or other reasons. In cases where Government do not intervene and parties do not resort to arbitration, there should be no restriction on direct action, after the initial notice has been given and negotiations have failed."

*H. M. S.*

The H.M.S. observed: "The Appellate Tribunal should be abolished forthwith; but on question of law an appeal should be provided to the appropriate High Court". .... "The qualifications of members of Labour Courts should be such as to

qualify them to be judges of ordinary civil courts of law. The qualifications of Chairman and Members of Labour Tribunals must be such as to make them eligible for appointment as High Court Judges." The H.M.S. added, "The parties should be encouraged by Government to settle disputes by negotiations and collective bargaining, but at the same time the State should intervene when conciliation fails. Government must refer the dispute to adjudication when either of the parties, namely, the employers or workers, desires that the dispute should be referred to adjudication."

#### *A.I.T.U.C.*

The A.I.T.U.C. said, "We are particularly opposed to the authority of the Appellate Tribunal which during its two years' life has proved to be the main factor for creating industrial strife..." The A.I.T.U.C. referred to the memorandum signed by several unions and sent to the Government by the Anti-Appellate Agitation Committee of Bombay, demanding the abolition of the L.A.T. The A.I.T.U.C. added: "We want the Appellate Tribunal to be abolished at once. It has become an agency not for settlement of disputes but for provoking disputes and strikes under the garb of settling them. This Tribunal has acted right from the beginning with an essentially wrong approach to the industrial problems and a wrong understanding of its own responsibilities of maintaining or establishing industrial peace and good relations. By its short-sighted, formalistic, pro-employer and anti-worker attitude it has been guilty of creating a critical situation in the industry, and provoking, in some cases thousands of workers to strike." The A.I.T.U.C. pointed out that the attempt by the L.A.T. to achieve "an all-India uniformity" had in practice resulted in reducing and lowering the existing labour standards in the more highly industrialized States of India. The A.I.T.U.C. urged that if the Government were to aim at the uniformity of working conditions, etc., the trend must be in the upward and not downward direction. "Revisions from the awards of standing tribunals to the respective industrial courts should be allowed only when workers ask for it. But there should be no reference to a Central Industrial Tribunal in the name of a fictitious all-India uniformity."

The A.I.T.U.C. disapproved not only of compulsory

arbitration, but also of the suggestion "that everything be left to the contending parties without any State intervention". It opposed compulsory adjudication and arbitration on the ground that they would lead to an open dictatorship over the working class. The A.I.T.U.C. suggested that "The State must legislate for compulsory recognition of unions and collective bargaining in all fields", and "...in the event of failure of negotiations and collective bargaining, the workers should be free either to exercise their right to strike or to refer the dispute to arbitration, for which a machinery should be at their disposal for use at their will". It added that "arbitration must be made applicable in a dispute when the workers demand it".

The A.I.T.U.C. added that the working of the existing laws on industrial relations had shown that they were designed to enable only the political party in power, the Indian National Congress, to become entrenched in the trade union movement through its subsidiary organisation, the Indian National Trade Union Congress. The A.I.T.U.C. urged that the existing law "should be repealed and a new law be framed, not with the same objectives, but with different ones, that is, without political prejudices and with the ideas of enabling the workers to build strong democratic trade unions..."

#### *U.T.U.C.*

The U.T.U.C. stated, "As regards the Appellate Tribunal, though there is growing discontent against it, there is still necessity for such machinery under the present conditions. But there should be time limit...within which the award is to be given by such Tribunal." The U.T.U.C. added that a latest full-bench judgement of the Appellate Tribunal had excluded supervisory personnel from the purview of the Industrial Disputes Act. No industrial dispute could, therefore, any longer be raised over the employment or non-employment of any officer or supervisory staff and this had in many cases given rise to very embarrassing situations.

The U.T.U.C. thought that voluntary conciliation and voluntary arbitration were the ideal objectives but "under the existing conditions where the employers generally look down upon the workers as an inferior species of human beings and where the workers do not enjoy the status of equality with employers",

*The Decision to Abolish the L.A.T.*

the State had to intervene through compulsory conciliation and compulsory arbitration.

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All the three all-India organisations of employers stated that they were in favour of the retention of the L.A.T. The important observations made by them were as follows:

*All-India Organisation of  
Industrial Employers*

While the A.I.O.I.E. was in favour of encouraging settlement of disputes through negotiation, collective bargaining and voluntary arbitration, it thought that in the existing state of industrial relations in the country it was not feasible to completely do away with compulsory adjudication, which should, however, be used as a last resort and only when all other attempts at settling a dispute had failed. The Organisation strongly felt that there should be a provision for appeals from the decisions of the lower tribunals both on questions of law and fact and for that the Appellate Tribunal must be retained.

*Employers' Federation of India*

The Employers' Federation of India was emphatic that compulsory arbitration or adjudication was basically wrong in principle, and that the new legislation should not provide for compulsory arbitration except for rare cases of emergency and for public utility services.

The Federation further felt, "if Government decide to retain Industrial Courts and Labour Tribunals, it is essential to retain Appellate Tribunal in order to ensure (a) a measure of all-India uniformity in the interpretation of the law and the application of basic principles; and (b) to exercise a steady influence over the lower tribunals."

The Federation added that the personnel of industrial tribunal should be drawn from the ranks of judicial officers of the requisite qualifications and further all appointments to industrial tribunals should, in future, be made by the judicial departments of the Central and State Governments, since such a method of appointment would act as a valuable safeguard for

maintaining the position and prestige of the industrial tribunals and in ensuring their judicial impartiality.

*All-India Manufacturers' Organisation*

The A.I.M.O.<sup>7</sup> was of the opinion that the Government's labour policy needed to be completely reorientated to place a greater emphasis on voluntary negotiation and settlement of disputes by the parties themselves and to discourage resort to law courts and labour tribunals. The Organisation emphasised: "The regulation of conditions of work and settlement of disputes should be, as far as possible, through voluntary negotiations and voluntary arbitration rather than through compulsory arbitration." . . . "Compulsory adjudication should be resorted to only in a national emergency or when no settlement is arrived at within a prescribed time-limit through ordinary efforts and that too for certain categories of disputes only and not for all."

Regarding the Appellate Tribunal, the Organisation said: "The Central Appellate Tribunal will be the highest judicial authority . . . and it should be retained for ensuring uniformity and co-ordination of judgement and awards and for adjudicating on the important issues and for giving a final interpretation to all clauses. It should have all-India jurisdiction with separate benches for important centres according to requirements to try disputes having all-India importance."

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As regards the State Governments, the opinion was divided. While some of the State Governments recommended the abolition of L.A.T., others favoured its retention.

#### 8. THE NAINITAL CONFERENCE

The entire problem of industrial relations was placed before the

7 The All-India Manufacturers' Organisation, established in 1941, is one of the three centrally recognised employers' organisations and represents industrialists devoted to the cause of industrialisation of the country. The main objectives of the A.I.M.O. are: "To bringing about the rapid industrialisation of the country through sound and progressive economic policies; increasing the aggregate wealth of India and to raise the standard of living of the Indian people; utilising to the fullest possible extent all the available material resources and talent in the country; and relieving the pressure of population on land."

Twelfth Session of the (tripartite) Indian Labour Conference held at Nainital on 8th-11th October, 1952. Shri V.V. Giri, in his opening speech at the Conference, said:

“It has . . . been my firm conviction all these years that internal settlement of disputes is eminently to be preferred to compulsion from outside and that collective bargaining and voluntary arbitration should be encouraged in preference to compulsory arbitration. Compulsion may be inevitable during war or in times of emergencies, but it is as inappropriate in peace as drugging is in health. The country has had compulsory arbitration for full six years after the war and, I feel, has already grown weary of it. Wherever I went during my recent visits, workers and employers were unanimous in their condemnation of the litigious spirit it has engendered and in their demand that the time had come for turning a new leaf in the chapter of industrial relations.”

Referring to the question of continuance of the Appellate Tribunal, Shri Giri said, “...opinion is divided. The large majority of workers' organisations are totally opposed to it and have demanded its immediate abolition. Employers' organisations and a number of State Governments have recommended its continuance. During my tours I came across a large volume of public opinion, particularly among the workers' organisations, urging the immediate abolition of the L.A.T. If we adopt a policy of voluntary conciliation and voluntary arbitration for settling disputes in the case of non-public utility services which constitute the bulk of industry and employment, the need for the Appellate Tribunal would, even from the point of view of the employers who have asked for its retention, be very much less than at present when numerous disputes are compulsorily sent for adjudication. Moreover, industrial relations would receive a rude shock if an agency were set up and maintained in the teeth of determined opposition from one of the concerned parties.” Bearing all this in mind, particularly the strong feeling among the workers against the L.A.T., Shri Giri urged the Conference and specially the employers to return a unanimous verdict in favour of the abolition of the Appellate Tribunal so that the new policy of mutual agreement and collective bargaining could be launched under good auspices and

goodwill from all quarters.

(A) THE VIEWS OF THE STATE GOVERNMENTS

There was considerable difference of opinion at the Conference with regard to the retention of the Appellate Tribunal. The State Governments expressed divergent views in the matter. The representatives of the Governments of Bihar (Shri R.S. Pande, Labour Secretary), Madhya Bharat (Shri V.V. Dravid, Minister of Development and Labour), Punjab (Shri D.N. Nigam, Labour Commissioner), and West Bengal (Shri S.K. Haldar, Labour Commissioner—an Adviser to the Government delegation) did not favour the retention of the Labour Appellate Tribunal.

The delegates from the States of Delhi (Dr. B.R. Seth, Director of Industries and Labour), and Mysore (Shri A.G. Ramachandra Rao, Labour Minister), thought that the retention of the L.A.T. was necessary to ensure uniformity in the decisions of the industrial tribunals. The representative of the Government of Mysore added that the right of appeal should be allowed only in cases which were certified to involve "fundamental questions." As regards the personnel of the appellate body, he suggested that in place of the L.A.T. a special Board might be constituted, consisting of a High Court Judge, an experienced Labour Minister of a State, and a chartered accountant. The representative of the State Government of U.P. (Shri O.N. Mishra, Labour Commissioner) felt that one appeal at least should be allowed against all decisions to a tribunal, to be called the State Board, and its decision should be final.

Shri Kanta Prasad, Labour Minister, Bhopal, said that the conditions of industrial relations in the country, in particular "the power politics which the labour and the industrial field" offered, did not warrant dispensing with compulsory adjudication. The difficulty in regard to delays in decision could be met by supplementing the existing machinery with arrangements for voluntary arbitration and agreement.

(B) WORKERS' ORGANISATIONS

*I.N.T.U.C.*

Shri Hariharnath Shastri pointed out that the justification of the system of compulsory arbitration during the last five or six years

had been that all the central trade union organisations in the country had come to support the policy of compulsory arbitration, some laying more emphasis on it and others a little less. While two years ago almost all the organisations in the country, barring the I.N.T.U.C., had decried the system of compulsory arbitration as a very "heinous" thing, they had since then come to believe that some sort of compulsory arbitration must be retained in the interests of the workers. Shri Shastri thought that though there should be a definite departure from the past policy, all the same, having regard to the past difficulties in settling them, the disputes should be resolved by the method of collective agreements. Government should, however, arm itself with powers to refer any dispute to adjudication if it felt that necessary in the interests of the community and the workers.

#### *H. M. S.*

Shri Dinkar Desai referred to the replies to the Questionnaire sent by the H.M.S. urging that conciliation must be tried, failing which Government must refer the dispute to arbitration if the workers or the employers so wanted. This implied a sort of half compulsory and half voluntary arbitration but in actual fact it would be voluntary arbitration for the workers, because generally the employers would not ask for arbitration and even if they did, labour would not be afraid of it. The past experience of the H.M.S. had been that whenever the workers had asked for adjudication—that really meant voluntary arbitration—they did not get it.

#### *U.T.U.C.*

The delegates of the U.T.U.C. favoured retention of the Appellate Tribunal for some time more, for the following reasons: (a) the State Governments were more partisan and less progressive than the Central Government; (b) the Judges of the Appellate Tribunal had the benefit of their past experience in the High Courts and could command confidence; and (c) there must be uniformity in principles underlying judicial decisions which could be achieved only through the L.A.T. It was emphasised that the complaint regarding delays could be remedied by directing the Appellate Tribunal that any proceedings before it must be finished within a specific period of time and that legal

technicalities and formalities should not be much insisted upon.

Shri B.N. Dube, the U.T.U.C. delegate, complained:

"We all want conciliation, mutual settlement, etc., but our difficulty is that the employers up to now have never responded, unless and until they have been forced by some mass sanction of the workers or the interference of the Government. You perhaps know that one of my unions got recognized after 19 years' struggle. Shri Shastri is fortunate and we are not. I totally agree with my friend Shri Desai that whenever the I.N.T.U.C. wanted arbitration or adjudication, they got it, but we do not get it. They get what they want because their men are Ministers and naturally they will have some interest in building up their organisation. If their organisation does not grow, the Ministers cannot remain Ministers. We are fortunately or unfortunately not in that position. The facilities which the I.N.T.U.C. get are denied as a rule to other organisations. So, I would humbly submit that we should start with mutual settlement and voluntary conciliation. Employers also should co-operate with us by changing their outlook, although I cannot believe that overnight they will change. For the past 19 years they have not co-operated. If they co-operate, all right; but if not, there must be some legal sanction. If the employers do not co-operate, they should be forced to co-operate."

Shri S.A. Dange (A.I.T.U.C.) agreed that compulsory arbitration had retarded the development of trade unions. He welcomed the proposals for the introduction of voluntary collective bargaining, but feared that the employers' acceptance of the proposals was based on their belief that with their own strength, supplemented by the strength that the State would lend them, they would be able to beat down the workers. He made it clear

8. Shri Shanti Lal Shah, Minister of Labour, Bombay, contesting the charges of partiality in adjudication, pointed out that during the period 1948-1951 the ratio of adjudication granted to adjudication refused in regard to the Bombay City was 81:18. The ratio of cases in which adjudication had been granted to the total number of requests made for it was 85% for the A.I.T.U.C., 84% for independent unions, and 80%

that the proposals for collective bargaining were acceptable to the A.I.T.U.C. on the condition that the State would not lend its forces to the side of the employers in their struggle against the working class.

Shri S. Guruswamy, President, All-India Railwaymen's Federation, drew attention to the limitations of collective bargaining. Collective bargaining to be successful required a reasonable frame of mind on either side. The lacuna in the existing labour legislation, which excluded supervisory staff from its purview, needed to be removed.

### (c) EMPLOYERS' ORGANISATIONS

#### *Employers' Federation of India*

Shri N.H. Tata, insisting on retention of the Appellate Tribunal, stated that he would be prepared to persuade the Federation to agree to the abolition of the L.A.T. if there were suitable substitute machinery which would ensure uniformity of law. He felt that every opportunity should be given to the workers and the employers to come to terms; and if they did not come to terms, the dispute should then be settled by a suitable machinery which should be constituted by the Central Government (Ministry of Law). The tribunal in the new arrangements should include sitting Judges of the High Court and possibly an auditor and such other person as might be suggested by the workers and the employers. Such an arrangement would help usher in collective bargaining, ensure that during the transition period there would be some kind of machinery to take care of 'stalemates', and do away with the need for the Labour Appellate Tribunal, about which the employers had very strong views and against which the employees had always agitated.

#### *All-India Organisation of Industrial Employers*

Arguing for the retention of the Appellate Tribunal, Shri Shanti Prasad Jain stated that if the machinery of adjudication (which was necessary as a last resort when other methods failed) were retained, it would be necessary to retain the Appellate Tribunal also. It was a mistake to think that the employers were in favour of retaining the Appellate Tribunal because its awards would be favourable to them. The L.A.T. was an independent

body and its judgements could go as much against the employers as the workers. The employers wanted the Appellate Tribunal to be retained for the sake of uniformity in decisions of tribunals. The Appellate Tribunal would be in a position to review the various awards made by different tribunals in different centres and industries and the decision of the Appellate Tribunal would also provide the necessary guidance and precedents to the tribunals in making their awards. Shri Jain added that the complaint regarding the delays in giving of decisions by the L.A.T. could be met by an increase in the number of its Benches and by fixing time-limits within which the Appellate Tribunal must give its decisions.

#### *All-India Manufacturers' Organisation*

Shri H.P. Merchant said that his organisation favoured mutual negotiations, collective bargaining and voluntary arbitration. Resort to adjudication should only be in times of emergency or for interpretation of awards or agreements or on legal points, and that too for certain categories of disputes only. Both the industrial tribunals and the L.A.T. should be constituted by the Ministry of Law. The Appellate Tribunal should be retained to ensure uniformity and co-ordination of judgements and awards, to adjudicate on the important issues and to give final interpretation on legal provisions and agreements.

#### THE FINAL RECOMMENDATIONS OF THE CONFERENCE

Summing up the discussions, the Chairman, Shri V.V. Giri, Labour Minister, stated:

"It would appear that there is general agreement that the Appellate Tribunal should be abolished. I have taken note of the anxiety of the employers' organisations that the abolition of the Appellate Tribunal should not again lead to lack of uniformity in awards and of the suggestions made by the Employers' Federation of India in that respect."

Shri Giri added:

"On the question of basic policy it is abundantly clear that the employers without exception wish to

see a much greater measure of emphasis being placed on collective bargaining and mutual settlement of disputes through voluntary conciliation and voluntary arbitration. On this very important issue at least there is no difference of opinion between the three groups... "While I am myself inclined to take some risks, I can certainly understand the cautious approach made by some of you. A leap in the dark, as the protagonists of compulsory adjudication would consider its abolition, is often a frightening experience, and while in my opinion, risks have sometimes to be taken, if the ultimate goal is to be achieved, I cannot blame those who would prefer to postpone the ordeal as long as possible and until they are better fitted for it. . . . The shift of emphasis from compulsory adjudication to collective bargaining is itself a great gain. Collective bargaining must become a habit instead of a necessity, and a habit becomes ingrained only if one has faith in it. . . . The settlement of industrial disputes is a difficult task but the cultivation of goodwill is an infinitely more difficult one. Compulsory adjudication may attempt the former, but collective bargaining alone can achieve the latter."

## II. THE DEMAND FOR ABOLITION FINDS SUPPORT

### 1. LABOUR SITUATION IN 1953 & 1954

TOWARDS THE CLOSE of the year 1953 a serious situation developed in the textile industry on account of accumulation of stocks and several units of the industry proposed to close one or more shifts, involving lay off or retrenchment of a large number of workers. To alleviate the sufferings of the workers, an Ordinance, called The Industrial Disputes (Amendment) Ordinance, 1953, was promulgated on 24th October, 1953, providing for compensation for retrenchment or lay-off, which was fixed as equal to 50 per cent of the total basic wages and dearness allowance and the duration of benefit was limited to 45 days in a year. In regard to retrenchment, the Ordinance provided that a workman who had been in continuous employment for less than one year would not be retrenched until he had been given one month's notice in writing or one month's wages in lieu of such notice and retrenchment compensation calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months. The provisions of the Ordinance were incorporated with slight amendments in the Industrial Disputes (Amendment) Act which was passed on 23rd December, 1953.

The employment situation remained static in 1954. There were some signs of improvement, possibly because of the increased tempo of outlay under the last phase of the First Five Year Plan.

The considerable improvement in industrial relations noticed after 1950 was maintained during the years 1953 and 1954. There was no major strike during the period. The number of disputes resulting in work-stoppages was 722 in 1953 and 840 in 1954, as against 963 in 1952; the number of man-days lost was 3.38 million in 1953 and 3.37 million in 1954. The percentage of disputes concerning bonus increased from 10.1 in 1952 to 10.4 in 1953 and it fell to 6.7 in 1954; the corresponding figures for disputes concerning wages and allowances were 30.4, 27.5 and

The total number of registered trade unions was 6,029 and 6,658 in 1953-54 and 1954-55; those submitting returns were 3,295 and 3,545 respectively and their respective membership stood at 2.11 and 2.17 million. On 31st March, 1953, the I.N.T.U.C. had 587 affiliated unions with .92 million members; A.I.T.U.C., 334 unions and .21 million members; H.M.S., 220 unions and .37 million members; and U.T.U.C., 154 unions and .13 million members. The corresponding figures for 1954-55 were: I.N.T.U.C.: 604 and .93 million; A.I.T.U.C.: 481 and .31 million; H.M.S.: 157 and .21 million; and U.T.U.C.: 221 and .19 million. The average (median) unionisation ratio for the more important industry groups was 38.7 per cent in 1953-54 and 37.9 per cent in 1954-55. The average daily employment in the textile industry in these two years was 1.17 million, and the ratio of unionisation 38.7 per cent and 38.8 per cent respectively. The daily average factory employment was 2.9 million in 1953 and 3.0 million in 1954; the corresponding figures for mines were .59 and .57 million; for plantations 1.18 and 1.24 million; and for shops and commercial establishments 1.09 and 1.03 million.

During the years 1953 and 1954 there was no wage revision of major importance, but large sections of industrial workers, particularly in the cotton textile industry, received substantial amounts of money by way of annual bonus. The average annual money earnings in factories were Rs. 1,111.1 and Rs. 1,111.3 in 1953 and 1954 (as compared to Rs. 1,111.9 in 1952). The index number of money earnings was 151.8 in both the years, as against 150.9 in 1952, and the index of real earnings stood at 124.7 and 131.1 respectively as compared to 127.6 in 1952.

An important development during the period was the acceptance by Parliament in December 1954 that the objective of Government's economic policy should be to establish a "socialistic pattern of society" and that towards this end the tempo of economic activity in general and industrial development in particular should be stepped up to the maximum possible extent.

## 2. THE L.A.T. AWARDS (November 1952-July 1954)

The important awards given by the L.A.T. during the period November 1952-July 1954 are briefly summarised in Appendix II.

### *Bonus*

As regards bonus, the L.A.T. in its awards mostly followed the principles enunciated by it in the Full Bench Formula. The L.A.T. clarified that production bonus in effect was nothing more than a claim to bonus as generally understood. In *Associated Cement Cos. Ltd., Khalari v. Their Workers' Union*, the L.A.T. (Shri Majumdar and Shri Mitter) held, "a claim to bonus can normally be entertained only if there be trading profits for the year under claim and the amount of bonus would depend upon the amount of profit. A general and precise formula to be complied for all future years should not accordingly be laid down unless the facts lead to the conclusion that there would be profits year after year and also that the amount of profits would bear the burden of bonus...having due regard to the fair claims of capital and other considerations..." (3-7-52, 1952 II LLJ 484)

In the dispute between *Famous Cine Laboratory, Bombay* and its workmen, the industrial tribunal had awarded bonus on the ground of social justice, even though there was no 'available surplus'. In appeal, the Appellate Tribunal (Bombay Bench, Shri Jeejeebhoy and Shri M. Waliullah), set aside the award and observed: "The grant of bonus amounts to labour's participation in the prosperity of a concern during the year in question. There must, therefore, be a foundation of prosperity in the year before a tribunal is justified in granting bonus. And what is social justice? Social justice is not a fancy of any individual adjudicator; if it were so then ideas of social justice might vary from adjudicator to adjudicator over all parts of India. In our Full Bench decision...we carefully considered the question of social justice in relation to bonus, and there we equated the rights and liabilities of employers and workmen with a view to achieving a just formula for the computation of bonus. That Full Bench decision stands, and this Tribunal and all other tribunals are bound by it." (21-1-53, 1953 I LLJ 466)

In *Burmah-Shell Oil Storage and Distributing Co. of India Ltd., Bombay, and two others v. Their Employees*, the L.A.T. (Bombay Bench, Shri Mitter and Shri Jeejeebhoy) modified the quantum of bonus from 4 months' basic wages to 9/24th for the workmen and 7/24th for the clerical staff. Different rates of bonus for workmen and clerical staff were allowed on the ground

that there was a substantial difference in their respective basic wages. The L.A.T. ruled, "Bonus must, therefore, have some relation to wages; it is intended to supplement wages and not to double or multiply it, for wages are not fixed solely on the capacity of a concern to pay. Care must also be taken to see that the bonus which is given is not so excessive that it creates fresh problems in the vicinity, that it upsets emoluments all round, or that it creates industrial discontent and the possible emergence of a privileged class. Furthermore, we must not be unmindful of the impact of an unduly high bonus on the community as a whole." The L.A.T. added that the object of granting bonus was to help the workmen in filling the gap between wages which they were receiving and the wages which they would have received if a living wage standard had been reached and the question whether the grant of bonus was profit-sharing, or whether such profit-sharing was permissible, was of a mere academic interest. The L.A.T. noted, "For the purpose of fixing the amount of bonus, no detailed enquiry is necessary as in the case where living wages are to be fixed, for the whole gap need not be filled up. It may be filled up even partially, the object being to allow the workmen a supplementary income in the shape of bonus from which to meet the reasonable needs of a human being living in society. In determining to what extent the gap should be filled, the capacity of the employer plays a very important part." The L.A.T. did not concede that the company was paying a living wage and that the claim to bonus was redundant. (25-5-53, 1953 II LLJ 246)

In *J.K. Cotton Manufacturers Ltd., Kanpur, and others v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri B.B. Prasad), held that no industry could continue to exist if bonus was awarded from capital or from reserves. Hence, if there was available surplus bonus must be awarded but if there was no such surplus it should not be given. The L.A.T. added that it was true that there was an observation in the judgement in *Muir Mills case* to the effect that there was nothing in the Full Bench decision which would lead to the inference that on no account past years' profits were to be taken into consideration. Later decisions of the L.A.T., however, had laid down in categorical terms that in considering the question of bonus the profits of the trading year alone should be taken

into account. The L.A.T. further observed that its decisions concerning sugar factories of Bihar and U.P. (1951 I LLJ 469 and 1952 I LLJ 615) could in no way be interpreted to imply that bonus by the textile factories of Kanpur should also be given on industry-cum-region-wise basis. In both these cases, the L.A.T. had remarked that the sugar industry was an established one in which conditions of employment and wages were standardised and it was therefore necessary that the bonus should be industry-wise. The textile industry was not, the L.A.T. opined, standardised. The mere fact that a few cotton textile mills had paid bonus did not justify that other units in that industry also should be called upon to pay it. The principle, applied to sugar industry that a unit could be exempted from payment of bonus only after it showed positive loss, had not been and could not be applied to cotton textile industry at its existing stage of development. If a company suffered loss on account of mismanagement, shareholders and labour suffered alike. The solution did not lie in the award of bonus but in the change of management.

Admitting that the balance-sheets could be and were at times manipulated, the L.A.T. ruled that it would be wrong to discard a particular balance-sheet on the basis of vague and sweeping allegations without there being positive evidence that it was faked. It must be presumed to be correct unless the contrary was shown by definite evidence. The claim of the workers that they should be protected from the arbitrary reduction of the residual balance by the management had never been denied. "If managing agents deliberately divert profits to the selling agents with a view to deprive labour of their bonus and pay commission to the selling agents at high rates then certainly the matter must be taken into consideration in the determination of available surplus balance".

The L.A.T. added:

"The cases of *Vazir Sultan Tobacco Co., Ltd.*, (1952 I LLJ 814); *Messrs. Alcock Ashdown & Co., Ltd. v. Their Workmen*, (1952 I LLJ 819); and *Metal Box Co., of India, Ltd.* (1952 I LLJ 830), hardly support the proposition that the Full Bench Formula has undergone a change. The last two decisions point out that the employers have now become rehabilitation conscious and claims for rehabilitation should be strictly scrutinized. The *Vazir*

*Sultan Company's case* lays down the principle that it is open to a tribunal to determine for the purpose of the Full Bench Formula what should be the fair prior charges for rehabilitation and such like matters. We respectfully agree with these principles.

"So long as the Full Bench Formula is not modified by a larger Bench or by legislation or by mutual consent of the parties we are bound by it. We cannot deviate from it. ...The Full Bench decision laid down two kinds of principles—(1) those which were basic and were not variable, e.g. that bonus could be awarded only if there is any available surplus balance, that such available surplus balance shall be arrived at after making provision for "prior charges", that ordinarily bonus should be given on unit-wise basis; and (2) those which were variable and capable of modification to suit the special features of a particular case, e.g. what return should be allowed on paid-up capital and reserves employed as working capital, in determining rehabilitation charges, what should be the multiplier or what should be taken as the age of the machinery." (9-7-54, 1954 LAC 716)

In a number of appeals, the L.A.T. reversed or modified the decisions of the lower tribunals awarding bonus, on the ground that no surplus was available after all the prior charges, in particular those relating to rehabilitation reserves and statutory depreciation and income-tax, had been deducted and no allowance was made for the future or extraneous profits.

The L.A.T. ruled that bonus in oil distributing companies and sugar industry in Bihar should be determined on industry-cum-regional basis, considering that conditions and cost of living differed from place to place. It also upheld the claim of workmen (including clerical staff) in oil companies to bonus, as they also had contributed towards production.

In several cases the L.A.T. emphasised that the amount of bonus given should not be so excessive as to exhaust all the available surplus of profits or have repercussions on industrial relations in the region; nor was it necessary to fill the entire gap between the prevailing wage and the living wage. It also stressed that the past losses and arrears of depreciation and dividends should not be so adjusted against the surplus available

for a trading year as to nullify the workers' claim to bonus. In one case the L.A.T. took note of the under-stated profits and inflated expenditure of the concern; in another it awarded bonus on the basis of data supplied by the workers' representatives, rejecting the balance-sheet filed by the management. The L.A.T. allowed, in one case, bonus to the workers which they would never have got on the basis of audited balance-sheet and profit and loss accounts. (*Minakshi Mills Ltd. v. Their Workmen*, 1953 II LLJ 520) The L.A.T. generally deprecated discrimination between clerical staff and workers in awarding bonus and favoured a uniform rate of bonus for both (except where the wages of workers were relatively much lower).

As regards rehabilitation reserves, in *Trichinopoly Mills Ltd. v. National Cotton Mills Workers' Union*, the L.A.T. (Madras Bench, Shri Jha and Shri Waliullah) said that the formula laid down (by the Bombay Bench in *Textile Mills, Ahmedabad v. Textile Labour Association, Ahmedabad*, 1951 II LLJ 354) for determining the total amount of rehabilitation of industry and machinery (for 15 years) by multiplying the depreciated value of the fixed block by 2.7 did not "appear quite accurate" and that the correct approach would be to calculate it on the basis of the original value of the block and not on its depreciated value. The amount of rehabilitation was calculated by deducting, from the replacement cost, 5% for breakdown of machinery, general reserves and rehabilitation reserves and then dividing the balance by 15. (21-5-53, 1953 II LLJ 361) In *Minakshi Mills Ltd., Madurai and Manapparai v. Their Workmen*, the L.A.T. (Madras Bench, Shri Jha and Shri Waliullah) reiterated, "In calculating rehabilitation reserves it was the original value of the block of machinery that would have to be multiplied by 2.7 and not the depreciated value of the block as on the date of dispute." It also confirmed the grant of 4% return on reserves used as working capital. (1953 II LLJ 520)

In a number of cases the L.A.T. approved of the use of 2.7 as multiplier for determining the replacement cost of textile machinery; it further allowed the calculation of the amount of rehabilitation by deducting depreciation, 5% for breakdown values of machinery and plant and available general reserves and other liquid assets from the replacement cost of the block.

In one appeal, the L.A.T. (Madras Bench, Shri Jha

and Shri Waliullah) refused to treat interest on investment in fixed deposits and shares as part of the available surplus, on the ground that they were not related to employees' efforts. (1953 II LLJ 520) In another case, the L.A.T. (Bombay Bench, Shri Jeejeebhoy, Shri Reuben and Shri Prasad) said that income from investment in shares of allied concerns to protect or extend its main business would be included for purposes of determining bonus, as the workmen had contributed towards it by dealing with relevant correspondence and keeping accounts. (18-6-54, 1954 II LLJ 180)

In *Indian Vegetable Products case* (14-4-54, 1954 II LLJ 441) the L.A.T. (Bombay Bench, Shri Campbell-Puri and Shri Prasad) held that, in accordance with the course adopted in *The Millowners' Association, Bombay v. R.M.M.S.* (1950 II LLJ 1247—the Full Bench Formula case), in determining the available surplus, income-tax must be calculated *without* deducting the amount of bonus claimed. [A different decision was given by the L.A.T. (Calcutta Bench, Shri Mathur and Shri Jha) in *T. Tellery and Sons Ltd., Bhadohi, Benares v. V.D.N. Sahi*. (15-10-52, 1953 LAC 167) ]

As regards bonus in electrical concerns, there was a definite shift in the attitude of the L.A.T. during 1952-1954. In *Jhansi Electricity Company Ltd. v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Mathur and Shri Jha), not subscribing to some of the observations made by the Bombay Bench of the L.A.T. (Shri Lakshmana Rao and Shri Jeejeebhoy) in the dispute between *Bombay Suburban Electric Supply Company Ltd.* and their workers (1952 II LLJ 195), held that the surplus for bonus had to be determined from the actual balance-sheet (and not from the working-sheet indicating 'capital base', 'clear profits' and 'reasonable return') and there was no reason why the workers should not get enhanced bonus when the shareholders had been paid dividend at increased rates and the directors had been paid special bonus. (27-10-52, 1953 I LLJ 252) In the case of *West Coast Electric Supply Corporation Ltd.*, the Full Bench of the L.A.T. at Calcutta (comprising Shri Mitter, Chairman; Shri Jha, Shri Waliullah and Shri S.N. Modak), held, "there was a possibility of having funds which without breach of the provisions of the Act may be distributed as bonus on the lines of the Formula laid down in our

Full Bench decision on bonus in the Bombay Textile case; that such bonus may be payable from one-third of the excess not exceeding 7½ per cent of clear profits over 'reasonable return', and it may even be paid when the clear profits did not exceed the 'reasonable return'" (as in every case the amount representing the 'reasonable return' might not be exhausted by payment of a reasonable return to shareholders, being calculated not on the share capital but on capital base and on the other items). (12-1-54, 1954 II LLJ 169)

#### *Dearness Allowance*

In its awards concerning claims for increase in dearness allowance, the L.A.T. held that it was not desirable to change the long term arrangements concerning dearness allowance rates at short intervals.

#### *Dismissal, Reinstatement and Retrenchment*

The L.A.T. awards on the question of dismissal and reinstatement during the period under review were mostly based on the principles enunciated by the L.A.T. earlier. The L.A.T. held that membership of trade union organisation by itself could not be accepted as the proof of victimisation by the employer. The L.A.T. ruled that 'go slow' amounted to misconduct, warranting dismissal if the management were to view it so in a particular case. In *Ramakrishna Iron Foundry, Howrah v. Their Workmen*, the Full Bench of the L.A.T. (Sarvashri Mitter, Jha, Waliullah and Modak) held that the employer could not be given the right to discharge the workman for his participation in an unjustified strike or even in an illegal strike where there was no appropriate provision in the certified standing orders or unless the strike was not *bona fide*, but at the same time to withhold such a right in every case of unjustified strike might lead to undesirable consequences for national economy and a balance had, therefore, to be struck between the interests of industry and the curtailment of the bargaining power of the workmen. (18-2-54, 1954 II LLJ 372)

As regards retrenchment, the L.A.T. awarded retrenchment compensation varying from 15 days' to one month's total emoluments. In the case of *Mahalakshmi Mills Ltd.*, the L.A.T. granted retrenchment compensation to workmen who even were not a

party to the dispute. (7-5-53, 1953 II LLJ 356)

### *Gratuity*

The earlier approach of the L.A.T. towards claims for gratuity continued during the period. It, however, clarified that retrenchment relief and gratuity were intended to serve entirely two different purposes and that claim for both would be admissible if the financial position of the company allowed it.

### 3. THE DEMAND FOR ABOLITION GATHERS MOMENTUM

#### *The I.N.T.U.C. Presses for the Abolition of the L.A.T.*

The I.N.T.U.C., at its Fifth Annual Session held at Modinagar on December 27, 1952, under the presidentship of Shri Khandubhai K. Desai, reiterated that the L.A.T. should be abolished without any further delay. At its meetings held on March 28-29, 1953, the Working Committee of the I.N.T.U.C. expressed concern over the progressive deterioration of the position of the working class during the past few months, the crisis in the tea industry involving loss of employment for fifty thousand workers, mass retrenchment of over ten thousand workers in jute industry of West Bengal and the similar situation prevailing in mica and shellac industries in Bihar. The Committee stated that while it recognised the importance of collective bargaining (which in its turn depended for its effectiveness on the organised strength of the working class), it saw now conflict between collective bargaining and functioning of industrial arbitration and tribunals. It was convinced that the frequently reiterated opposition to the method of arbitration and adjudication had encouraged the employers to ignore the demands and interests of workers and had also led to the slackening of action on the part of some State Governments with regard to the settlement of industrial disputes.

The General Council of the I.N.T.U.C., at its meeting held on May 20-21, 1953, at Nutan Mahavidyalaya in Indore, re-emphasised that the L.A.T. should be abolished and there should be no appeal from decision of one court to another. On the basic policy concerning industrial relations which should be

embodied in the new legislation proposed by the Government of India, the Council resolved that the emphasis should be on settlement of disputes by direct negotiations and voluntary arbitration but in the event of the deadlock continuing, the Government must intervene and refer the dispute to adjudication, specially if the workers desired adjudication.

A meeting of over 200 representatives of the workers from 65 sugar factories of U.P. and 20 sugar factories of Bihar and 3 sugar factories of Punjab, held in September 1953 under the chairmanship of Shri S.S. Jauhari, M.L.C., the President of the Indian National Sugar Mills Workers' Federation, passed a Resolution, urging upon the Government to abolish the L.A.T. The meeting viewed with grave concern the decision of the Appellate Tribunal permitting the employers to dismiss all the 21 persons of the executive committee of the union in Phagwara Sugar Mills in the P.E.P.S.U.

The *Indian Worker*, the official organ of the I.N.T.U.C., in its issue of November 7, 1953, pointed out that after the introduction, by an ordinance, of a scheme of compensation for the retrenched and laid-off workers to meet the threat of large-scale involuntary unemployment, attention had shifted to the other 'vexed' question of the Labour Appellate Tribunal. It noted that the spokesmen of the organised workers had for a long time felt that the L.A.T. had outlived its utility.

#### *The Impact of the I.N.T.U.C. on Government Labour Policies*

The General Secretary of the I.N.T.U.C., Shri Hariharnath Shastri, in his annual report for the period November 1952-October 1953, to the Sixth Annual Session of the I.N.T.U.C. (31st December, 1953) noted:

"Our organisation may claim to have played an effective part in shaping the policies of the Government on economic problems to the advantage of the working class and of the country as a whole. The latest proof of our successful attempt in influencing the Government policies is the promulgation of a new ordinance to put an effective check on closures and retrenchments. It was our organisation alone which forcefully raised its voice against the policy of such closures and mass retrenchments that

were against the interests of workers and at the same time impeded the industrial development of our country. "The year under review started with serious difficulties in the field of industrial relations in a number of States and also in relation to some of the departments of the Government of India. One of the main factors responsible for such a position was the then approach of the Government in placing too much emphasis on unfettered collective bargaining. The motive of the Labour Ministry was clear. They wanted proper and healthy growth of industrial relations in this country, based on mutual goodwill. Such policy, however, was not appreciated in its true perspective in many places and misinterpreted by interested parties to suit their convenience.

"The I.N.T.U.C. gave a bold lead in meeting the situation. There has not been any difference in the basic approach of the I.N.T.U.C. and the Labour Ministry on industrial relations. We have always held that the method of collective agreement is the ideal system in democratic society. At the same time it was our definite view that in the present crucial period when the country was subject to planned economy and when maximum production was the need of the hour, unfettered reliance could not be placed on collective bargaining, which gave free handle to unscrupulous employers and disruptive elements in the trade union field.

"I am glad to say that the weight of our approach has received appreciation in the country and there is a definite re-orientation during the year under review in the policy of the Government in regard to industrial relations. The Labour Minister himself in his recent pronouncements emphatically asserted that the Government have decided to take resort to adjudication as and when it is felt necessary."

At the Sixth Annual Session of the I.N.T.U.C., held at Jalgaon on 31st December, 1953, Shri Michael John. in his Presidential address, said : "I am constrained to note that there is an inordinate

delay on the part of the Government in implementing even unanimous decisions of the trade union representatives. Legislation regarding the abolition of the Labour Appellate Tribunal and the amendments regarding the definition of a 'workman' in the Industrial Disputes Act is long overdue. ...I hope the Government will not delay the legislation that is necessary for improving labour-management relations and will be prompt in intervening in disputes which are likely to have serious repercussions on the economic life of the country if allowed to drag on."

The General Council of the I.N.T.U.C. at its meeting held on May 23rd and 24th, 1954, under the presidentship of Shri S.R. Vasavada, passed an important Resolution on wage policy for the industrial sector. The Council regretted that the objectives embodied in the Resolution on the Industrial Truce (1947) had been ignored. The real wages of the workers had deteriorated compared to pre-war times. Only in certain industries with the help of bonus, the workers had been able to maintain barely the pre-war standard of life, but large sections of workers even in these industries had been "deprived of bonus as a result of the unjust, impracticable and self-contradictory formula evolved by the Labour Appellate Tribunal." The Council urged that wages should be revised, raised and standardised to give the workers a fair wage at the existing level of prices and to avoid litigation and disputes.

A series of articles on "Bonus Problem in India" by the I.N.T.U.C. Research Service, in the *Indian Worker* (the official weekly organ of the I.N.T.U.C.), appeared in its issues for March 1954. Commenting on the decisions of the L.A.T. in the disputes concerning to Jhansi Electricity Co., Ltd., (1953 I LLJ 252), Indian Hume Pipe Co., Ltd. (1951 I LLJ 379), Ajodhya Distillery, Raja-ka-sahapur (1951 II LLJ 613), it was pointed out that the question of grant of bonus in branches of a parent concern was still in a confused state. It pleaded for the grant of bonus on a unit-wise basis in such cases, on the ground that otherwise the workers of the profit-making units would lose incentive to work more. It was contended that in cases where profits were pooled together, a balance-sheet could still be prepared for each branch from the overall accounts of profit and loss.

It was further pointed out that unlike the sugar industry

of U.P. (where the payment of bonus was directed by the L.A.T. on industry-cum-region basis) the loss-making mills in the cotton textile industry of Bombay, had been exempted from paying bonus. The writer stressed the need for pooling of profits in the textile industry for purposes of distributing bonus to the workers both of profit-making and loss-making mills. In this connection it referred to the minutes of dissent submitted by Shri Khandhubhai K. Desai to the report of the Profit-Sharing Committee.

*The Attitude of the H.M.S. and the  
A.I.T.U.C.*

The Hind Mazdoor Sabha, at its Fourth Annual Convention, held at Kanpur from 25th to 27th December, 1953, urged the Central Government to undertake legislation on industrial relations designed to promote speedy settlement of disputes through the combined system of collective bargaining and compulsory arbitration. Under such a system Government must refer a dispute to adjudication if the workers so wanted and strikes should not be banned, as the latter constituted the only effective weapon with the working class to be used in the last resort for the successful working of collective bargaining.

The All-India Trade Union Congress adopted at its Twenty-Fourth Session (May 27-28, 1954) a Resolution which said that the six years of the operation of the Industrial Disputes Act, Industrial Disputes (Appellate Tribunal) Act and the Bombay Industrial Relations Act had indicated quite clearly that 'the main aim and striving of these legislations in the name of industrial peace' was to abolish virtually the workers' right to strike, to make all strikes, however justified, illegal and to impose condign punishments on the workers. On the other hand, the employers, who had ignored or refused to implement the awards of the industrial tribunals or industrial law, had been consistently treated with solicitude and tenderness. The workers, due to the strength of trade union movement, had been able to extract some concessions even under the unsatisfactory working of the machinery for compulsory adjudication. The A.I.T.U.C. emphasised that so long as compulsory adjudication machinery continued, the following safeguards must be provided: (a) ban on every kind of punishment of workers during

adjudication; (b) fixing of maximum time limits within which adjudication should be completed; and (c) provision for referring disputes to adjudication when demanded by the workers' organisations.

#### 4. THE L.A.T. AND THE COMPREHENSIVE INDUSTRIAL RELATIONS LEGISLATION

The question of the abolition of the L.A.T. came up again for consideration at the meeting held from 4th to 6th December, 1952, of the seven-man committee which had been appointed by the Indian Labour Conference at its Twelfth (Nainital) Session to suggest the lines on which the Government might proceed to frame a new Industrial Relations Bill. Shri R.K. Jalan, representing the A.I.O.I.E., said that as long as compulsory adjudication continued to be provided under law, the Appellate Tribunal must also continue in order to ensure uniformity in decisions of industrial tribunals and also to provide for a review of decisions when necessary. Shri Jalan added that all appointments of national tribunals envisaged in the proposed legislation should be made by the Central Ministry of Law. The tribunals should consist of three members; and if the tribunals were to inspire confidence in the employers, the Chairman and one of the members should be sitting Judges of the High Court. The third member must be a chartered accountant. The Tribunals should also be assisted by assessors. If the workers had strong objection to the chartered accountant being a member of the Tribunal, his place might be taken by another sitting High Court Judge, provided the chartered accountant was there as an assessor or adviser.

In the light of the discussions and recommendations of the seven-man committee, the Ministry of Labour set out to formulate a new Labour Relations Bill, in consultation with the Employing Ministries and the Planning Commission. A draft Bill was placed before the Labour Ministers' Conference at its Tenth session held on February 6-7, 1953. During discussions, some State Labour Ministers strongly felt that the L.A.T. had outlived its utility. It was pointed out that the workers had found it very expensive and the employers had used it as a handle for delaying justice. There was also a general feeling that there was no need for having High Court Judges or chartered

accountant on the State Tribunals. It was, however, agreed that the tribunals should be constituted under the proposed legislation in such a way as would give general satisfaction to all the parties.

At the Thirteenth Session of the Indian Labour Conference, held at Mysore on 7th-9th January, 1954, Shri V.V. Giri, Union Minister of Labour, referring to his pleading hard at the Nainital Conference (1952) for the substitution of a policy of mutual negotiation and settlement of disputes for that of compulsory adjudication, pointed out that detailed consultations during and after that Conference had, however, convinced him that the conditions in the country were not favourable for a change in the basic policy that governed the administration of labour laws.<sup>6</sup> Shri Giri added that he had therefore come to the conclusion that

8. Shri Giri explained that the reduced margin of profit was forcing the hands of the employers to explore all possibilities of economy, including retrenchment of workers and rationalisation of methods of production. In such an economy, the bargaining power of labour was very limited, especially in sectors in which workers were not adequately organised. There could be no question of bargaining when one of the parties was in the position of being able to do without it. There was also another important reason for avoiding any radical experiments—the need for all sections of the community to pull their weight together for the full implementation of the First Five Year Plan. It would not be proper for sectional interests to indulge in activities or methods which might retard the progress of the Plan even though these might otherwise be unexceptionable. While, therefore, compulsory adjudication had to continue for some time more, what was needed was not a mere arrangement for the day-to-day settlement of disputes but the development of a new and more desirable approach to the whole problem of labour-management relations. Labour and management must realise that they were not in opposite warring camps and that the greatest battle that they had to wage and win was the conquest of their own prejudices and predilections so that collective bargaining might take a new meaning, i.e. more emphasis on collective thinking rather than on conflicting bargaining.

Explaining the change in his attitude, Shri Giri said:

“If I had to eat my words I am not ashamed of confessing anything that I have done or that I have not done. ...because I felt that unless both the sections in the industry believe, to some extent at least, in that theory, it would not work. I am a practical realist and I claim to be a practical trade unionist for thirty-five years and if, therefore, I had to beat a bit of retreat, and retreated, I made it only to be able to advance hereafter.”

compulsory adjudication had to continue to remain an important feature of labour-management relations for sometime more. Shri Giri further announced that the new Industrial Relations Bill was being drafted in consultation with the different Ministries of the Government and it was his intention to introduce the Bill in Parliament at an early date.

During discussion at the Conference, Shri N.H. Tata (E.F.I.) and Shri S.P. Hutheesing (A.I.O.I.E.), said that in view of the fact that compulsory adjudication was to remain the main method of settling industrial disputes, the L.A.T. should be retained as the reviewing authority for purposes of adjudication. Shri Tata added that the employers had hoped that with the proposed elimination of tribunals, the proper atmosphere would be created for the development of collective bargaining. The Government, however, appeared to be in favour of retaining compulsory adjudication and it was, therefore, necessary to ensure that the tribunals would follow some uniform principles in giving awards.

The Congress Parliamentary Party, in March 1954, expressed dissatisfaction over the delay in bringing forward of the new legislation.

During the debate on the Demands for Grants of the Ministry of Labour for 1954-55, Shri V.V. Giri said in the Parliament, on March 31, 1954, that the proposed, comprehensive Industrial Relations Bill had been drafted and it awaited only the approval of the Government before being introduced in Parliament. During the debate, Shri R. Venkataraman (Congress) said that there was no other aspect of industrial relations on which there was greater unanimity of opinion among the several sections of the people than on the question of the abolition of the L.A.T. The L.A.T. was creating a litigious spirit among the parties, which was not conducive to the development of arbitration. The people of Madras, Mysore, Hyderabad and Travancore-Cochin were experiencing great difficulty, as the bench of the L.A.T. having jurisdiction over these areas was located at Lucknow. Shri Venkataraman urged that a Bench of the L.A.T. should be set up at Bangalore, Hyderabad, or Madras to remove the inconvenience and expense the people from the South were put to under the existing arrangements.

## 5. THE EMPLOYERS "AGREE" TO THE ABOLITION OF THE L.A.T.

The question of abolition of the L.A.T. was discussed at a meeting of the Joint Consultative Board of Industry and Labour held at New Delhi on 16th and 17th July, 1954.<sup>9</sup> Shri G.L. Nanda, the then Minister of Planning, Irrigation and Power, and Chairman of the Board stated that the workers were unanimous in their demand for the abolition of the Appellate Tribunal. He drew attention to the labour relations policy laid down in the Five Year Plan which envisaged that there should be no provision for appeal except against decisions found to be perverse or against the principle of natural justice.

The employers' representatives stated that it was not correct to say that the delay and difficulties had been caused by the Appellate Tribunal only. The argument of delay was fallacious inasmuch as no one would think of abolishing, say, the Supreme Court on the ground that it would delay the final disposal of a case. It was surprising that there was so much opposition to the Appellate Tribunal which had been set up mainly with a view to establishing some sort of uniformity in the varying and embarrassing awards given by the different industrial tribunals.

If a large number of cases were coming before the Appellate Tribunal it was because the lower tribunals were so constituted that decisions given were not just and reasonable. If the Appellate Tribunal, which was acting as a corrector of hasty and wrong decisions of the lower tribunals, were abolished, it would worsen industrial relations instead of improving them. It was urged that instead of abolishing the Appellate Tribunal, Government should strengthen the lower tribunals so as to make their decisions reasonable and fair to both the parties and thus reduce the existing dependence on the Appellate Tribunal.

The representatives of workers' organisations felt that the existence of the L.A.T. had led to increased litigation in the

9. The employers' representatives present at the meeting were: Shri Shanti Prasad Jain, Calcutta, and Shri Surottam P. Hutheesing, Ahmedabad (All-India Organisation of Industrial Employers); Shri N.H. Tata, Bombay, and Shri G.A.S. Sim, Calcutta (Employers' Federation of India). The workers were represented by Shri S.R. Vasavada, Ahmedabad, and Shri G.D. Ambekar, Bombay (Indian National Trade Union Congress); and Shri Dinkar Desai, Bombay (Hind Mazdoor Sabha).

hierarchy of courts, with the result that the disposal of disputes took unnecessarily long time. There were cases of disputes pending for seven to eight years without any prospect of being settled in the near future. After the establishment of the Appellate Tribunal, practically every decision had gone in appeal. This was especially due to the fact that even where there was no serious violation of natural justice, the Appellate Tribunal had practically in every appeal upset the decisions of the lower tribunals. The expectation that it would create uniformity of principles had been belied. On the contrary, the L.A.T.'s decisions had led to more diversity in judgements and had been criticised by High Courts in some cases as perverse and devoid of common sense. Thus, apart from justice delayed, the Appellate Tribunal had created more injustice and dissatisfaction between both the parties.

At this stage, Shri Nanda said that it would perhaps meet both the employers' and the workers' points of view if the Appellate Tribunal were abolished and at the same time the lower tribunals were so constituted as to ensure fair and just decisions.

Confronted with the poser that alternative suggestions be made on the basis that the Appellate Tribunal would go, the following decisions were taken by the Joint Consultative Board regarding the future adjudication machinery:

- (1) The existing machinery for adjudication should be replaced by a new system which would ensure speedy and final disposal of each dispute at a level appropriate to its nature and importance.
- (2) The new set-up should consist of three tribunals—two at the State level and one at the national level.
- (3) The lower tribunal at the State level should be presided over by a sitting District or Sessions judge.
- (4) The higher tribunal at the State level should be presided over by a sitting High Court Judge and assisted by a representative each of the employers and the workers. In addition, the tribunal should consist of a technical assessor or a chartered accountant who should be chosen by the presiding judge in accordance with the requirements of the case.
- (5) At the national level there should be a tribunal similar in composition to the higher State tribunal.

- (6) Normally all disputes should be settled by the two tribunals at the State level. Questions of national importance and disputes covering more than one State should be referred to the national tribunal.
- (7) At the State level, disputes relating to minor matters should be referred to the lower tribunals whereas disputes relating to important matters should be referred to the higher tribunal.  
(Regarding the classification of disputes to be allocated to different tribunals it was decided that the Ministry of Labour should work out detailed proposals for consideration by the Board.)
- (8) Each dispute should be settled finally by the tribunals to which it was referred and there should be no appeal.
- (9) If, however, a particular dispute were to contain various demands, some minor and some major, each demand should be referred to a tribunal appropriate to its importance for final decision.

During discussions, the workers' representatives insisted that unless the demand for the abolition of the L.A.T. was conceded, they would not agree to an amendment of Section 33 of the Industrial Trade Disputes Act to provide that the employer could, during the pendency of the proceedings before a conciliation or adjudicating authority, proceed with disciplinary action against the workman in accordance with the Standing Orders.

The employers' representatives made it clear that they had not mandate from their respective organisations for agreeing to the abolition of the Appellate Tribunal. Their agreement therefore was subject to confirmation by their respective organisations.

It was also agreed that it was desirable to lay down norms and standards for different terms of employment, such as wages and bonus, and that this would require considerable research.

### III. THE PERIOD OF SUSPENSE

#### 1. LABOUR RELATIONS IN 1955 AND 1956

DURING the years 1955 and 1956, the number of disputes increased from 840 in 1954, to 1166 in 1955 and 1203 in 1956; and the man-days lost from 3.38 to 5.69 million and 6.99 million respectively. The percentage of disputes concerning bonus increased from 6.7 in 1954 to 17.3 in 1955; it came down to 8.8 in 1956. Wages and allowances were responsible for 30 per cent disputes in 1954, 24.6 per cent in 1955 and 28.3 per cent in 1956. The number of adjudications in 1955 was 2,804 as against 1,712 in 1952. There was no nation-wide work stoppage in 1955 but there was a general strike in the textile industry in Kanpur in the months of May, June and July, 1955, over the issue of rationalisation. During 1956, there were two country-wide strikes. Besides, there were widespread strikes in the textile industry in Bombay in March and July, over the issue of increased quantum of bonus, in coal mines of West Bengal during September and October for demands not satisfied by the Coal Award and in glass industry of Firozabad (U.P.) during June and July, for increased wages, eight-hour working day and holiday on Sunday.

The number of registered unions in 1955-56 and 1956-57 was 8,095 and 8,554 respectively. Of these, 4,006 and 4,399, submitted returns and their membership stood at 2.27 million and 2.38 million respectively. The verified membership of the four national organisations of the workers during 1955-56 and 1956-57 was as follows:

	1955-56		1956-57	
	Number of affiliated unions	Membership (in million)	Number of affiliated unions	Membership (in million)
I.N.T.U.C.	617	.97	672	.93
A.I.T.U.C.	558	.42	(Not available)	
H.M.S.	119	.20	138	.23
U.T.U.C.	237	.16	(Not available)	

The average (median) ratio of unionisation for the more important industry groups was 32.4 per cent in 1955-56. In the textiles it was 35.3 per cent, the average daily employment being 1.18 million. The daily factory employment in 1955 and 1956 averaged as 3.1 and 3.4 million, as against 3.0 million in 1945. In mines it was .59 million in 1955 and .63 million in 1956; in plantations it stood at 1.4 and 1.20 million respectively.

There were several important wage revisions in 1955. Wages of the workers in the manganese mines in Madhya Pradesh, Kolar Gold Fields in Mysore, jute industry in West Bengal and collieries in different States were enhanced as a result of the awards of the tribunals. The average annual earnings of the factory workers were Rs. 1,173.5 and 1,187.0 respectively in 1955 and 1956. The index of money earnings (base: 1947) stood at 159.4 and 162.6, and of real earnings at 144.9 and 134.6 respectively.

The year 1955 witnessed an important development in the sphere of joint consultations, i.e. the number and scope of voluntary collective agreements between industry and labour increased. Several important agreements were concluded, particularly in the textiles, plantations and iron and steel industry. In February 1955, the Bata Shoe Company Ltd. and the Bata Mazdoor Union, Batanagar, concluded an agreement whereby the Company recognised the Union as the sole and exclusive bargaining agent for its workmen and agreed not to indulge in unfair labour practices. Two collective agreements were signed on 27th June, 1955, between the Ahmedabad Millowners' Association on the one side and the Textile Labour Association on the other. The first agreement provided that disputes between the member mills of the Ahmedabad Millowners' Association and the Textile Labour Association would be settled by mutual negotiations and, in cases where no such settlement was possible, by arbitration. The second agreement assured over 1,20,000 textile workers of Ahmedabad of a minimum bonus to the extent of 4.8 per cent (or 15 days) of their annual basic income for the years 1953 to 1957. The claims relating to bonus were to be determined on the basis of the working results of the concern as disclosed in the balance-sheet and profit and loss account for the year. The agreement stipulated that bonus would be

payable only out of an "available surplus of profit" after making provision for all the prior charges, e.g., statutory depreciation and development rebate, taxes, reserves for rehabilitation, replacement and modernisation of block and a fair return on paid-up capital. The fair return was to be taken as laid down in the Full Bench Formula of the Labour Appellate Tribunal, namely, 6 per cent on paid-up capital (in cash or otherwise, including bonus shares) and 2 per cent on reserves employed as working capital. A ceiling of 25 per cent was fixed on the maximum bonus that could be granted. In any year of loss, an amount equal to 4.8 per cent of basic yearly wages granted as bonus was to be carried forward to the next year as "set off", and if the available profits were large enough to give more than 25 per cent (i.e., maximum ceiling), the surplus would be carried forward to the next year as a "set on" for that year. The "set off" and "set on" were to be purely notional for the purposes of calculations and were allowed under a departure from the L.A.T.'s Full Bench Formula.

In September 1955, an agreement about payment of bonus for the years 1953 to 1956 was concluded between the Indian Tea Association and the representatives of workers in the tea gardens of Assam, West Bengal and Tripura, as a result of the efforts of the tripartite Bonus Committee set up by the Industrial Committee on Plantations. An agreement was signed in January 1956 between the Tata Iron & Steel Company Ltd., Jamshedpur, and Tata Workers' Union, providing for closer association of employees with management at different levels within the undertaking.

In March 1956, the Millowners' Association, Bombay, and the Rashtriya Mill Mazdoor Sangh, entered into an agreement which entitled 0.25 million workers of the textile mills of Bombay to bonus for the years 1952 to 1957. The agreement provided for distribution of bonus from the available surplus after allowing prior charges in accordance with the L.A.T. Formula (allowing also development rebate for the years 1953-55 only), subject to a maximum of three months' and a minimum of 15 days' basic earnings. If the surplus available for distribution as bonus was to exceed the amount required for payment of the maximum bonus, an *ad hoc* amount of Rs. 10,000 was to be set aside for utilisation when the profits were inadequate to pay the

minimum bonus.<sup>10</sup> The agreement also stipulated that "if in any year the amount of statutory depreciation and development rebate will be higher than the amount of reserve for rehabilitation, the full amount of statutory depreciation and development rebate shall be adopted as a prior charge and no extra provision shall be made for rehabilitation in that year". The Agreement further contained a provision for the appointment of a Commission to inquire into the question of the cost of rehabilitation of the cotton textile mills in Greater Bombay with a view to determining how the figures for rehabilitation for the years 1956 and 1957 should be adjusted. The Commission estimated that the industry-wise cost of rehabilitation, replacement and modernisation of such machinery and plant installed prior to 1st January, 1947, as continued to be in existence on 1st January 1956, was Rs. 66.57 crores and Rs. 39.34 crores for buildings, making a total of Rs. 105.91 crores, as against Rs. 99 crores (Rs. 72 crores for plant and machinery and Rs. 27 crores for buildings) estimated by the Industrial Court in respect of the entire pre-1947 machinery and buildings. A similar agreement was concluded in 1956 between the Madhya Pradesh Millowners' Association and the M.P. Rashtriya Mill Mazdoor Sangh, with regard to 11 textile mills employing 30,000 workers; another agreement between the two parties provided for payment of dearness allowance to the tune of Rs. 15 lakhs annually. The Ahmedabad textile industry agreement was adopted with suitable modifications by the Modi Spinning and Weaving Mills, Modinagar, and the cotton mills at Surendranagar (Saurashtra), Sidhpur, Viramgam, Nadiad and Petlad, Cambay, Baroda and Surat.

Other important agreements concluded in 1956 included: an agreement about basic wages and progressive association of workers with the management between the National Newsprint and Paper Mills Ltd., Napanagar and their employees (February); a five year bonus pact signed between the Bombay Stevedores' Association and the Transport and Dock Workers' Union, Bombay (May); an agreement about monthly production bonus, wages on the basis of job evaluation, joint consultation

10. "In this case, worker dissatisfaction in the loss-making mills erupted into wildcat strikes in opposition to the union's agreement."

and redress of grievances between Indian Aluminium Co. Ltd., Belur Works and its employees' union (August); and a five year agreement about minimum wages and annual bonus linked to return on capital between Mysore Iron & Steel Works and their workers' association (November).

On April 30, 1956, the Government of India made a fresh statement of its Industrial Policy. The Industrial Policy Resolution of 1956 added 14 new industries to the list of industries to be developed as part of the public sector. The Resolution also said, "The maintenance of industrial peace is one of the prime requisites of industrial progress. In a socialist democracy labour is a partner in the common task of development and should participate in it with enthusiasm. Some laws governing industrial relations have been enacted and a broad common approach has developed with the growing recognition of the obligations of both management and labour. There should be joint consultation and workers and technicians should, wherever possible, be associated progressively in management."

## 2. THE GOVERNMENT DECIDES TO AMEND THE INDUSTRIAL DISPUTES ACT

The I.N.T.U.C, in a communication addressed to the Union Labour Minister early in 1954, urged that as the proposed comprehensive Industrial Relations Bill was likely to take quite some time, it would be preferable to bring forward an amending legislation to meet the immediate requirements.

The matter was considered within the Government at the highest level in a series of meetings and the Government decided in August 1955 that it was not an appropriate time to bring forward an important controversial measure like the Industrial Relations Bill and that only essential amendments to the existing law should be proceeded with.

## 3. SHRI GIRI RESIGNS

The L.A.T. gave in April 1954 its decision on the appeal filed against the award of the All-India Industrial Tribunal (Bank Disputes) commonly known as the Shastri Tribunal, in the

dispute between certain banking companies and their employees. Immediately after its publication on 28th April there were several representations to Government that the impact of the decision on the banking business of the country would be adverse and that it was not unlikely that in many cases individual units of the banking sector, particularly those in rural areas, would be in serious jeopardy due to the additional wage burden which the implementation of the award would impose. The Government, after a detailed consideration of the matter, decided that it would be inexpedient on public grounds to give effect to the whole of the decision of the Labour Appellate Tribunal. Therefore, on August 24th, the Ministry of Labour issued an order modifying the decision in several respects. However, it was considered desirable to have the matter investigated further so as to enable Government to assess more fully the probable effects of the modified decision on the individual units of the banking industry. Accordingly, on September 17th, the Minister of Labour made an announcement in the Lok Sabha regarding the appointment of a one-man Commission, consisting of Shri Justice G.S. Rajadhyaksha,<sup>11</sup> a judge of the Bombay High Court, to conduct a full enquiry into the bank dispute and to make detailed recommendations in the light of its findings.

Shri Giri resigned as the Union Minister of Labour on August 30th, on the ground of the non-acceptance of his advice by the Union Government in regard to the implementation of the L.A.T. Award on Banks. In his letter of resignation to the Prime Minister, which was released to the press he said that he had first suggested immediate implementation of the L.A.T.'s Award. When this was not accepted, he proposed the maintenance of *status quo* and the appointment of a high power commission to go into the facts. After the award was modified and announced, he suggested again that a high power

11. Unfortunately Shri Justice Rajadhyaksha died in February 1955, and Shri Justice P.B. Gajendragadkar of the Bombay High Court was appointed to succeed him. The Gajendragadkar Commission made a detailed and exhaustive enquiry and submitted its report to Government in July 1955. The Government accepted in full the recommendations of the Commission on the substantive terms of the award. Necessary legislation for the purpose of implementing these recommendations, namely, The Industrial Disputes (Banking Companies) Decision Act, 1955, was passed in October 1955.

commission should be set up immediately to enquire into all aspects of the matter. This too was not acceptable to the Government.

In his letter of resignation, Shri Giri referred at the outset to the "hurdles and obstructions" encountered by him in regard to the Industrial Relations Bill and the "growing feeling" among the employing Ministries that "each can have its own way and its own labour policy", and observed "it has been my fervent wish that the Government should be the model employer, inspiring other employers to follow their examples. But I have to confess that the possibility of this hope being fulfilled has become remote."

Dealing at length with Government's decision on the Bank Award, Shri Giri said, "...when we are not sure of facts and figures ourselves, I am afraid we cannot conscientiously say we have done justice to the employees." Regretting the action of the Government in modifying the Award, Shri Giri added: "I must frankly confess to my own feelings of sorrow at the unexpected turn of events resulting in a great setback to the labour policy of the Government, which till now has generally won the approbation of all sections." Shri Giri felt that the workers' organisations and banking companies would have otherwise been justified in thinking that he had failed in his duty to influence the Government in the right direction. "I have, therefore, come to the conclusion", Shri Giri said in his letter of resignation, "that the Cabinet decision has unwillingly become responsible for creating unrest and bitterness towards the Government among the workers of the country. I am afraid I cannot persuade myself to be a party to it. In the circumstances, I am convinced that I should tender my resignation of the office of Labour Minister. After a public life of four decades, in the cause of labour and of industrial peace, I cannot let a feeling grow that on account of lure of office, or for personal vanities, I have failed in my duty to the workers and to the country."

#### 4. SHRI KHANDUBHAI K. DESAI TAKES OVER AS LABOUR MINISTER

Shri Khandubhai K. Desai<sup>12</sup> succeeded Shri Giri as the Union

12. Shri K.K. Desai was General Secretary, Textile Labour Association, Ahmedabad, 1920; he established a network of unions throughout

Labour Minister on 10th September, 1954.

In a broadcast from the All India Radio on September 11th, Shri Desai said that the shift in emphasis progressively from compulsory adjudication to collective bargaining had been a move in the right direction. He further observed, "Though in the conditions prevailing in the country today compulsory adjudication has to be retained as a reserve weapon in the armoury of the State for tackling the difficult problem of labour-management relations, every trade unionist would always endeavour to secure a settlement by negotiation and conciliation in preference to an imposed decision through compulsory adjudication. I am particularly pleased with this new emphasis on mutual negotiation and collective bargaining, for, in my own place, Ahmedabad, we have, under the inspiration of Mahatma Gandhi, long evolved and practised the art of persuasion and negotiation." Shri Desai added: "I shall soon consider whether in view of the delay that has already occurred, the essentials of the labour policy, to the existing legislation, should not be enacted into law by an appropriate amending legislation. That would avoid the delay which might be caused by our waiting for a comprehensive legislation."

##### 5. THE L.A.T. & THE PROPOSED THREE-TIER MACHINERY

The proposal concerning the new three-tier system of adjudication machinery came up for discussion at the meeting of the Joint Consultative Board of Industry & Labour held in Bombay on November 3rd, 1954. Shri Gulzari Lal Nanda, Minister of

Gujarat; assisted in spreading the trade union movement in Indore and other centres; member of the Bombay Textile Labour Inquiry Committee, 1937; assisted in the first legislation on industrial disputes in Bombay; Member, Constituent Assembly of India, 1946; Vice-President of the Gujarat Pradesh Congress Committee, 1949-50, President, 1950-53; member of the All-India Congress Committee and the Congress Working Committee for seven years; member of the Fiscal Commission; played an active part in the establishment of the Indian National Trade Union Congress in 1947; elected its first General Secretary and was its President successively for the years 1949, 1950, 1951; led the workers' delegation to the International Labour Conference in 1950; Member of Parliament for several years; Chairman, Oil India Ltd., 1962-1963.

Planning, Irrigation and Power, presided. The Union Labour Minister, Shri Khandubhai K. Desai, explained the difficulties which the State Governments were experiencing in securing the services of High Court Judges for manning the industrial tribunals due to the limitations imposed by the Constitution on increasing the number of High Court Judges in different States. As many as 60 to 70 Tribunals were functioning simultaneously. The Union Labour Minister also indicated that an amending legislation was proposed to be introduced in Parliament shortly to provide for necessary changes in the adjudication machinery.

Appreciating fully the difficulties indicated by the Labour Minister, the employers' representatives strongly urged that if the Appellate Tribunal had to be abolished, some way should be found to strengthen the High Courts so that their personnel could be utilised to adjudicate upon industrial disputes. The representative of the All-India Organisation of Industrial Employers (Shri G.D. Somani) said that since the last meeting of the Board, his Organisation and its affiliated members had considered the question and they were strongly in favour of retaining the Appellate Tribunal. Shri N.H. Tata (E.F.I.) requested that the amending Bill should be shown to the employers before its introduction in Parliament. The Labour Minister agreed that one representative of each organisation would be given an opportunity to examine the draft amendments. It was also agreed that provision might be made in the legislation for the appointment of Senior Civil Judges to the lower State tribunals, to be called Labour Courts.

Draft Amendments to the Industrial Disputes Act, providing for the abolition of the L.A.T. and the creation of the three-tier machinery, were considered by the Labour Ministers' Conference at its Eleventh Session held at New Delhi on November 13th. The Union Minister of Labour, Shri Khandubhai K. Desai, presiding over the Conference, observed:

"I would like to say that mutual settlement between employers and employees is by far the best. Nobody objects to it. We would always welcome it, but in case they do not come to any settlement, what has to be done? Shall the democratic State allow them to indulge in the law of the jungle as in the 19th century? Would they

benefit of any wisdom and allow them to go to a war—and of course an industrial war? I believe that in the last analysis, industrial relations, in order to be put on a proper, efficient and effective basis, would have to be strengthened by recourse to compulsory adjudication.<sup>13</sup>

“I am one of those who believe that after having laid down the general policy on labour matters and our attitudes towards general labour problems, the States should have both the initiative and responsibility not only to enact supplementary legislation but also administer, in their own way, the various problems that come before them.

“With that end in view, I think we have decided that instead of bringing a comprehensive lgsislation, as far as industrial relations are concerned, it would be better to amend the existing law, which has given us good service, in matters which require to be amended and then leave the States to enact such supplementary legislation as they think will be proper to deal with those problems.”

During discussions, several State Labour Ministers stated that it would be difficult to secure the services of sitting High Court Judges to man the higher State Tribunals. Some Ministers even doubted the validity of the idea of having High Court

13. A similar view was expressed by Shri Desai at the Fourteenth Session of the Indian Labour Conference, held at Bombay from 14th to 16th May, 1955. Shri Desai, in his presidential address, stressed that during the period of the Second Five Year Plan greater impetus should be given to two processes both equally important and in a way complementary to each other. One was the process of mutual negotiation and the second was that of arbitration and adjudication. Where mutual negotiations did not bear fruit it was preferable to resort to adjudication quite freely than to allow the parties to indulge in a trial of strength. Co-operation between the employers and the workers was necessary for the realisation of the objective of the socialistic pattern of society. Many measures would be needed to achieve and sustain it. The foremost among these was the cultivation of a unity of outlook and purpose. Participation of the workers in industry had an important role to play in this direction. When the workers would realise that industry was theirs as much as it was that of the employers the field of conflict would obviously be greatly narrowed.

Judges, which implied a reflection on the rest of the judiciary. Others felt that the purpose could equally well be served by having, in lieu of High Court Judges, existing members of industrial tribunals with adequate experience or retired High Court Judges. Shri Gulzari Lal Nanda, drew attention to the agreement arrived at between the workers and employers at the meeting of the Joint Consultative Board, held in July 1954, whereby the employers had agreed to the abolition of the L.A.T. on the understanding that the higher State Tribunal and the National Tribunals would be manned by High Court Judges and that the provisions of Section 33 of the Industrial Disputes Act would be amended to allow disciplinary action being taken against the workmen during the pendency of conciliation or adjudication proceedings.

The Conference appointed a seven-member Committee to examine the matter in detail. The Committee made recommendations as follows, which were adopted by the Conference:

- (a) The lower State Tribunal (to be called Labour Court) might be presided over by a person with not less than five years' judicial experience.
- (b) The higher State Tribunal should consist of one person who was, or had been, a Judge of a High Court or had held the office of a member of a tribunal for not less than two years. The National Tribunal would be presided over by a sitting or a retired High Court Judge.
- (c) Provision should be made for the disposal of appeals that might be pending before the L.A.T. immediately before its abolition.

In pursuance of the assurance given by him at the meeting of the Joint Consultative Board of Industry and Labour (November 1954), Shri Khandubhai K. Desai, Union Minister of Labour, invited in the middle of March 1955 the representatives of the workers' and the employers' organisations to discuss the draft of the proposed amendments to the Industrial Disputes Act. These discussions with the Union Labour Minister were followed up by the employers' and workers' organisations by detailed comments, in written communications, on the draft Industrial Disputes (Amendment and Miscellaneous Provisions) Bill. The President of the Employers' Federation of India, Sir

Homi Modi, in a letter of 25th March, addressed to the Labour Minister, stated as follows:

“We are sorry, however, that the agreement reached between the employer and worker interests in the matter of replacing the L.A.T. had been completely set at nought in the proposed new sections 7, 7A and 7B. As you are aware the employers’ representatives were strongly opposed to the abolition of the Appellate Tribunal; the ground advanced by Government in support of abolition was there had been considerable delay in giving decisions. However, as they were told of the final decision of Government to get rid of the appellate body owing mainly to the opposition of a section of trade unions, employers had reluctantly to give their consent subject to certain conditions which were agreed to by all the workers’ representatives.

“At the last meeting of the Joint Consultative Board, I am afraid, you were at pains to explain...the reason which made you to go past the unanimous decisions of the Joint Consultative Board was the strong opposition on the part of State Governments. The fact, however, remains that a body which had considerable restraining influence over the lower tribunals is sought to be done away with. Considering the new status given to the labour courts and tribunals whose decisions are not appealable, it becomes all the more necessary for such authorities to be raised to the level of regular judicial bodies over which the Executive would have no control or influence.”

Sir Modi further pointed out that the proposal of the Government to insert in the Bill a provision to the effect that the appropriate Government would appoint the personnel of these (new) bodies with the approval of the High Court concerned or the Supreme Court, as the case would be, though an improvement, did not meet the employers’ point of view. He reiterated, “if the safeguard of the Appellate Tribunal is to be done away with, the new authorities at the highest level should be drawn from the ranks of persons occupying the status of High Court Judges.”

To Shri Homi Modi’s letter was appended a detailed note

suggesting certain modifications to the provisions of the Bill. It was proposed that the presiding officer of the Labour Court should not be below the rank of Subordinate or District Judge, and the existing members of industrial tribunals, to be eligible for appointment as presiding officers of the State Tribunals, should have at least 5 years' experience of tribunal membership (and not 2 years as proposed in the Bill). The Federation also suggested that the appointment of the presiding officer of the National Tribunal should be made by the Ministry of Law.

These suggestions were repeated by the Employers' Federation in a subsequent communication, dated February 14, 1956. The Federation re-emphasised the need for raising the level of the proposed adjudicating authorities to the status of regular judicial bodies over which the executive would have no control or influence. It was stressed that the personnel of Labour Court and of the State and National Tribunals should form part of the existing judiciary, so that dispensation of justice might be impartial and independent.

The All-India Organisation of Industrial Employers, in its letter of 24th March, referring to the agreement arrived at in the Joint Consultative Board, said:

"We are asked to discuss the alternative on the ground that a decision had already been taken by the Government to abolish the Appellate Tribunal and assurances were given that the personnel constituting the new adjudication machinery would be duly strengthened."... "So long as adjudication machinery is set up under a statute, it is of utmost importance that the parties to a dispute must feel satisfied about the working of the machinery... "We strongly feel that it should be possible to modify the Bill in such a way as to strengthen the personnel. The cost involved in appointing the High Court Judges to the State and National Tribunals should not be deemed as an insuperable obstacle."

The A.I.O.I.E., in a subsequent communication, dated 6th February 1956, addressed to the Ministry of Labour, added:

"...For the dispensation of justice to be impartial and free from control and influence by the executive, the adjudication machinery should form part of the regular judiciary. The adjudication authorities, having

to deal with important issues affecting industry and labour and consequently the industrial development of the country, must have a high and independent status and be manned by sitting High Court Judges. This demand gains greater pointedness with the proposal in the Bill to dispense with the appellate machinery...

“...the relevant sections regarding qualifications for appointment as the presiding officer of a labour court, industrial tribunal and national tribunal on the strength of their position held in the past does not meet the demand made by the employers that the adjudication machinery should form a wing of the judiciary of the country. It is therefore urged on Government that the Bill should be so modified as to provide for the appointment of sitting judges to industrial tribunals and national tribunals. If Government find some practical difficulty in the way of getting sitting High Court Judges to man the adjudication machinery, the whole question of appointments to the three-tier system may be reconsidered. In this connection, ...a new cadre may be constituted for the purpose. This would mean the creation of a new wing of the judiciary consisting of persons who are eligible for the regular judicial service, have the same status, the terms of service and eligibility for promotions to be High Court Judges.”

Shri G.D. Ambekar, President of the I.N.T.U.C., in his letter of March 30, welcomed the proposal of Government that the members of the Industrial and National Tribunals would be appointed with the approval of the High Courts and Supreme Court respectively.

#### *Debate on Demands for Grants for 1955-56 of the Labour Ministry*

During the debate in Parliament in the Spring of 1955 on the Demands for Grants for 1955-56 of the Ministry of Labour, Shri Ramananda Das (Congress) emphasized the need for strengthening of conciliation machinery and appealed to the Government to abolish the L.A.T. without further delay. He pointed out that the L.A.T. took an excessively long time in deciding appeals and such an inordinate delay had great adverse effect

on the interests and feelings of the workers.

## 6. THE L. A. T. AWARDS<sup>14</sup> (Subsequent to August 1954)

### *Bonus*

Three of the important awards given by the L.A.T. during this period concerned the disputes between *The Millowners' Association, Bombay* and *Rashtriya Mill Mazdoor Sangh*. In view of the heated controversy they gave rise to, they are described separately after this general survey.

The awards of the L.A.T. concerning bonus, subsequent to August 1954, generally followed the Full Bench Formula. In a number of cases, the L.A.T. set aside or reduced the bonus granted by the lower tribunals on the ground that no surplus was left for it after deducting the prior charges in strict compliance with the Full Bench Formula. An important award in this regard was given in March 1955 by the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri L.P. Dave) in an appeal preferred by *the Madhya Pradesh Millowners' Association* on behalf of nine textile mills of the State against the award of 1953 by the State Industrial Court (granting bonus, for the years 1950-51 and 1951-52, from one-half to three months' wages on the basis of the working results of the individual mills), and in a counter-appeal filed by the workers' union seeking enhancement of the bonus. The Industrial Court had held that it would be improper to take into account the market value of raw materials instead of their cost price, so long as the sale price of manufactured articles was not affected by the price levels of raw materials. It had also observed that the method of accounting employed by the mills, whereby they had succeeded in converting profits into loss appeared artificial and could not be allowed to be adopted in determining the question of bonus. The L.A.T. ruled that the Court had erred in taking into account the cost price of raw materials instead of the market price, thereby converting a shown loss of Rs. 16.36 lakhs into a profit of Rs. 1.66 lakhs. The mills had adopted the usual method of accounting for the purposes of the balance-sheet; the accounts had been

14. The important L.A.T. awards subsequent to August 1954, which are not mentioned here, are indicated in Appendix III.

duly audited and the balance-sheets had been duly certified and *prima facie* the accounting was correct. The L.A.T. pointed out that the Court had gone wrong in adding the excess profit-tax, refunded by the Government, to the trading results of the year; in not taking into account the full amount of the income-tax statutorily due (notwithstanding exemptions granted); in not deducting in full the managing agent's commission and in not allowing in full the managing agent's commission and in not allowing in full the statutory depreciation (as against the depreciation shown in the balance-sheet); in not providing for rehabilitation reserves; in allowing only 2% return on bonus shares as against 4% on paid-up capital; and in not allowing any return on reserves used as working capital. The L.A.T. reaffirmed that normal statutory depreciation was a component of the Formula as a prior charge and must be deducted as such, even if a concern had not been able to set it aside in any year on account of business or financial reasons.

Explaining its point of view, the L.A.T. said that the Full Bench Formula did provide for some elasticity in matters like return on capital and certain other prior charges, so as to allow for differences in industries and concerns, but the Formula was so stated as not to be susceptible to deviations. If, therefore, deviations had been introduced, there had been a departure from the Formula and the resultant conclusion would not be sustained. The L.A.T. added that there was no question of the company wanting "to take advantage of the Formula" for the simple reason that the Formula equated rights and claims as between capital and labour and indicated how bonus was to be ascertained. If the company wanted "to take advantage of the Formula" then labour also was "taking advantage of the Formula" because but for the Formula, bonus could not be ascertained. The L.A.T. regretted that the State Court had imported into its decision considerations of social justice which were not to be found in the Full Bench Formula. The L.A.T. set aside the award of the State Industrial Court and affirmed the decision of the Board of Conciliation, on the ground that there was no surplus available out of which bonus could be paid. The Appellate Tribunal added that 25% of the bonus awarded had already been paid and that the Millowners' Association had agreed that the workers should be allowed to retain the amount

as "ex gratia bonus". (*Model Mills, etc., Textile Mills, Nagpur v. Rashtriya Mill Mazdoor Sangh and others*; 24-3-55, 1955 I LLJ 534)

Another important award which was reversed by the L.A.T. concerned the dispute between *Madras Electric Tramways (1904) Ltd.*, and their workers and others. The L.A.T. (Bombay Bench, Shri Jeejeebhoy, Shri Reuben and Shri Prasad<sup>15</sup>) reversed on August 9, 1955, the decision of the industrial tribunal (awarding 50% of the reserves for improvement and extensions, taxation and general purposes which had remained unused at the time of its closure in April 1953, mainly due to financial reasons) on the basis of the principles enunciated by the Supreme Court in *Muir Mills Co. Ltd. v. Suti Mill Mazdoor Union, Kanpur*. (1955 I LLJ 1) In that case the Supreme Court had held that the workers, being not partners of the concern, were not entitled in law or in equity to any share or interest in its reserves or the undistributed profits and other assets and capital even at the time of its winding up. (9-8-55, 1955 II LLJ 280) In *Kanan Dewan Hills Produce Co., Ltd., Munnar, Travancore-Cochin v. The South Indian Plantations Workers' Union*, the L.A.T. (Madras Bench, Shri P.D. Vyas and Shri Mahmood Sheriff) observed, "If we examine the Full Bench decision as well as the various other decisions following the same, even in cases involving regular claim of a profit bonus as such, the Textile Formula has never been treated as being a last word on the subject or as an inflexible one, and the main approach to the problem is motivated by the requirement that we should ensure and achieve industrial peace which is essential for the development and expansion of the industry. ... It would be incorrect to say that whatever is termed bonus is admissible only under and in accordance with the Textile Formula, which really applies where the claim is made on the basis of profits and the workers' contribution to the same. Such a claim may also arise and become enforceable by way of agreement or custom, as for example, puja bonus, deepavali bonus, attendance bonus, efficiency bonus, production bonus, etc." (29-2-56, 1956 LAC 357)

15. Shri B.B. Prasad was a member of the Allahabad High Court and sat on the Bench which reversed the decision of the industrial tribunal awarding 50% share in reserves to the workers in *Cawnpore Electric Supply Corporation Ltd.*, on its closure. (1950 II LLJ 379)

The L.A.T. in several cases reiterated that even if large surplus of profits were available, the quantum of bonus should not be disproportionately large so as to have serious repercussion in other units in the vicinity; in one case the L.A.T. while not interfering with the award of six months' wages as bonus, ruled that it was desirable that maximum bonus should be limited to 4 to 5 months'. (1956 I LLJ 475) In another case the L.A.T. declared that the grant of bonus equal to 85.8 per cent of the available surplus was excessive and unreasonable. (1956 I LLJ 486) In *Trichinopoly Mills Ltd. v. Their Workmen*, the L.A.T., however, allowed bonus equal to 8 months' basic wages (66½ per cent of total earnings). (1955 LAC 392) In *Gujarat Spinning and Weaving Co. Ltd. v. Textile Labour Association and others*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) held that the proposition that one mill's profits should be taken to pay another mill's bonus, when the latter had not made sufficient profits, was unsupportable on existing notions of social justice. Collective liability for the payment of bonus was something which could not be secured except by agreement between the mills and the workmen concerned. (12-12-54, 1955 I LLJ 79) In another case, the L.A.T. held that the huge profits earned from rise in prices of raw materials due to the Korean War could not be included in determining the available surplus, as they were not due to the efforts of workers. In some other cases, the L.A.T. said that profit from sale of motor vehicles and motor cars, and interest on investment from reserves, must be considered extraneous in determining the available surplus. In one case, the L.A.T. ruled that the sale proceeds of left-overs like cotton waste, shorts and fents were not extraneous profits. The L.A.T., in one case, said that the interest earned by the company as the managing agent for another concern could not be treated as extraneous profit when the work relating to it had been done by some of its clerks. The L.A.T. also ruled that it was not necessary that bonus granted to the covenanted staff should not be deducted in full in calculating the available surplus if it were to affect adversely the residual surplus for bonus to workmen.

In accordance with its previous judgements, in *Ruston and Hornsby (India) Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy, Shri Reuben and Shri Campbell-Puri)

held that there was no justification for a lower return on bonus share in years subsequent to the year of their issue than the return allowed on paid-up capital. (10-12-54, 1955 I LLJ 73) However, in the case of *M/s Associated Electrical Industries (India) Ltd., Calcutta* (27-2-56, 1957 LAC 554) the L.A.T. (Calcutta Bench, Shri M.N. Gan and Shri V.N. Dikshitulu) ruled that the return on bonus shares should be lower than on shares paid for in cash, as bonus shares represented not only capital resources but also past profits earned with the help of the labour of the employees. While generally following its previous decision about awarding 6% return on paid-up capital, in an appeal concerning a tea company, the L.A.T. allowed 7% return on paid-up capital; it even allowed 8% return on ordinary shares in case of a concern in view of the nature of business not being attractive to investors and 9% for a proprietary undertaking where the nature of the business involved a good deal of wastage.

The L.A.T. stressed that there was no sanctity attached to the system of multiplier in cases where the machinery had been purchased second-hand and that the multiplier had to be varied according to the rise and fall in prices of machinery. [*Ruston and Hornsby (India) Ltd. v. Their Workmen*, (10-12-54, 1955 I LLJ 73, Shri Jeejeebhoy, Shri Reuben and Shri Campbell-Puri); and *Dharangadhra Chemical Works Ltd. v. Its Workmen* (10-2-56, 1956 I LLJ 475, Shri M.D. Lalkaka and Shri B.K. Khanna] In a number of cases, the L.A.T. allowed the determination of the amount for rehabilitation by deducting breakdown value of machinery, depreciation reserves and available general reserves from the total replacement cost. [e.g., *Ruston & Hornsby (India) Ltd. v. Their Workmen* (10-12-54, 1955 I LLJ 73); *Associated Cement Companies Ltd. and others v. Their Workmen* (27-6-55, 1955 II LLJ 145); *Saxby & Farmer Mazdoor Union, Calcutta v. Saxby & Farmer (India) Ltd., Calcutta* (30-8-55, 1955 LAC 707)]

In *Trichinopoly Mills Ltd. v. Their Workmen* (25-5-55, 1955 LAC 392, Shri V.K. Pillai and Shri Vyas), in *Ganesh Flour Mills Co., Ltd. v. Their Workmen* (16-7-55, 1955 LAC 538, Shri Prasad and Shri R.K. Basu); and in the case of *M/s Associated Electrical Industries (India) Ltd., Calcutta* (27-2-56 1957 LAC 554, Shri Gan and Shri Dikshitulu) the

L.A.T. allowed calculation of income-tax on gross profits without deducting bonus on the ground that the portion of net profits allotted as bonus was not taxable under the income-tax law and it was always open to the management to obtain a refund on it. In *Larsen & Toubro v. Their Workmen* (1955 II LLJ 238, Shri Jeejeebhoy and Shri R.C. Soni); *Anderson Wright Ltd. v. Anderson Wright & Co. Employees' Union* (25-2-56, 1956 I LLJ 664, Shri Gan and Shri Dikshitulu), and *Britannia Biscuit Co., Ltd., Bombay v. Their Workmen* (29-6-56, X FJR 499, Shri Jeejeebhoy and Shri Reuben), the L.A.T. held that the correct position would be to calculate income-tax on gross profits without deducting bonus and then to take into account the reduction in income-tax in determining the portion of the available surplus to be distributed as bonus.<sup>16</sup>

In one case, the L.A.T. favoured the pruning of the managing agency commission to a reasonable amount, if it were excessive. (1957 I LLJ 418) The L.A.T. held that there was no inflexible rule that an Industrial Tribunal should refuse the accounts of an employer on the only ground that they were not audited. (1955 I LLJ 154)

As regards bonus in electrical concerns, the shift in the views of the L.A.T., already discernible during the earlier period, became fully clear and pronounced. In the dispute between *U.P. Electric Supply Co. Ltd.*, etc., electricity supply undertakings and their workmen, a Special Full Bench of the Labour Appellate Tribunal (at Bombay, consisting of Shri Jeejeebhoy, Chairman;

16. Referring to the latter practice followed by the L.A.T.—taking into consideration the income-tax refund on bonus at the time of allocation of a share of the available surplus as bonus—, the I.N.T.U.C. in its memorandum submitted to the Bonus Commission in July 1962 observed that earlier the L.A.T. allowed for “taxation after providing for bonus. Later on, the same Labour Appellate Tribunal allowed taxation before providing for bonus and ultimately agreed to give the benefit of the rebate while determining the quantum of bonus payable out of the surplus. Though the net effect in both cases may be mathematically the same, yet the surplus looks unrealistically small, which has a depressing psychological effect on Tribunals while determining the quantum of bonus... Again if a company is not required to pay any tax in a particular year, because of losses in previous years, even then the Formula insists on providing for taxation. This will not be fair to the workers and this notional taxation should not be taken as a means to reduce bonus when the wage level is below even the fair wage.”

Shri Reuben; Shri Prasad; Shri Lalkaka; and Shri S.M. Ahmed) held on August 31, 1955, that bonus was one of the permissible items of expenditure under Schedule VI of the Electricity (Supply) Act, 1948, falling within item (xi), if not within items (i) and (i'), of Clause XVII (2)(b). About the controversy whether the Full Bench Formula on bonus could be applied to electric supply concerns (governed by special statutes), the Special Full Bench observed: "By our Full Bench Formula we have declared bonus to be a payment which the workmen may claim as of right provided there has been sufficient prosperity in any trading year. If that right has been so given, and it cannot now be doubted in view of its affirmation by the Supreme Court, then it follows that any payment in implementation of that right must be regarded as in any event 'one of the other expenses admissible under the law for the time being in force in the assessment of Indian Income-tax and arising from an ancillary or incidental to the business of electricity supply.'" The L.A.T. added that for ascertaining the surplus available for payment of bonus the criterion of excess of 'clear profits' over 'reasonable return' should not be adopted, as the 'capital base' in some of the units had enlarged so much over the years that the 'clear profits' were unable to reach the level of a 'reasonable return' even though the units were well developed and quite prosperous. In view of certain special circumstances, the L.A.T. said that the application of the Full Bench Formula to electricity supply concerns should be modified to allow contingency reserves as prior charges. Further, "annual depreciation allowable under the provisions of the Income-tax Act including the multiple shift depreciation must be provided for as a prior charge, and not initial or additional depreciation. As the initial and additional depreciations were an abnormal addition to the income-tax depreciation designed to meet particular contingencies and for a limited period, it would not be fair to the workmen that these two depreciations should be rated as prior charges. ... in many cases, if so allowed, there would be no available surplus left, even though the workmen might have laboured during the year to the best of their ability."

The L.A.T. added that in electrical concerns reserves other than depreciation used in expansion of the business need not be given any return (the Full Bench Formula made no provision for

return on such reserves as a prior charge) but it would be permissible for a tribunal while fixing a reasonable return on capital to take into consideration this fact and allow a little higher return if the other circumstances justified it. In any event, the return on paid-up capital, which included bonus shares, should not be less than 5 per cent, it might be a little more if the stated circumstances justified it; but not higher than 6 per cent. (31.8-55, 1955 II LLJ 431)

A similar view was expressed in *Baroda Borough Municipality v. Its Workmen* (Electric Department). The L.A.T. (Shri Lalkaka and Shri Khanna) remanded the case to the industrial tribunal, which had turned down the demand for bonus of workmen employed in the electricity supply department of the Baroda Borough Municipality on the ground that the department was not a profit-making concern but intended for the benefit of the public. The L.A.T. held, "A claim for bonus being now held to be maintainable only when profits made by a concern are sufficiently large to leave an available surplus after meeting all prior charges, there is no reason why a distinction should be drawn as between electricity supply concerns owned by individuals or joint stock companies on the one hand and those owned by municipalities on the other." (23-11-55, 1956 I LLJ 80) In *Surat Electricity Company's Staff Union v. Surat Electricity Company Ltd. and others*, the L.A.T. (Shri Jeejeebhoy and Shri Reuben) held that for the purpose of Full Bench Formula the initial and additional depreciations, which were disallowed by that Formula, must be ignored in fixing the written down value and in determining the period over which the normal depreciation would be allowed. The result would be a notional amount of normal depreciation; the Full Bench Formula itself was a notional Formula. By providing a *notional* amount of normal depreciation every year for the purpose of the available surplus Formula (and not the normal statutory depreciation), the employer must be allowed to get the full depreciation over a stated number of years. Further, income-tax that would become notionally payable on the profits so determined as per the Full Bench Formula must be provided for and not the income-tax as was actually paid. Considering that the concern in question had husbanded its resources. 6% return on paid-up capital must be held reasonable. Further, the amount paid back to the

consumers by an electricity concern as rebate under the statutory provisions in the year in question could not be added back to the profits for determining the 'available surplus'. (24-7-56, 1957 II LLJ 648)

In *Bennett Coleman & Co. Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Reuben and Shri R.C. Soni) allowed initial depreciation as a prior charge, as it was admissible under the Income-Tax Act as amended by the Amending Act of 1949. (15-4-55, 1955 II LLJ 60) [The decision of the Special Full Bench of the L.A.T. (consisting of Shri Reuben, Shri Prasad, Shri Lalkaka and Shri Ahmed in *U.P. Electric Supply Co. Ltd. etc.*, *electricity supply undertakings*, disallowing initial and additional depreciation as a prior charge, was given on 31st August, 1955.] In *Webbing and Belting Factory Ltd. v. Their Workmen*, the L.A.T. (Shri Waliullah and Shri A.M. Ansari) conceded additional depreciation as a prior charge, besides normal and initial depreciation already allowed by the industrial tribunal. (20-9-55, 1956 I LLJ 313) However, in *Peirce Leslie & Co., Ltd. v. Its Workmen* (30-1-56, 1956 I LLJ 458, Madras Bench, Shri Salim M. Merchant and Shri A.V. Krishna Rao) and in *Greaves Cotton & Crompton Parkinson Ltd. v. Its Workmen* (9-3-56, 1956 I LLJ 486, Bombay Bench, Shri Reuben and Shri K.C. Gupta), the L.A.T. disallowed initial and additional depreciations, following the judgement of the Special Full Bench in the case of *U.P. Electricity Supply Co. Ltd., etc.*

#### *Wages*

The awards of the L.A.T. concerning wages, during the period under review, brought out the long-term nature of the wage settlement, and the need for striking a balance between the needs of labour and the capacity of the concern to pay, keeping also in view the interest of consumers.

#### *Dismissal, Retrenchment and Gratuity*

The awards given by the L.A.T., with regard to gratuity, dismissal and retrenchment, and participation in strikes, generally indicated little change in its approach. The L.A.T. reiterated that the dismissal of the workmen would be wrongful unless the prescribed procedures were followed and there was no disregard of

considerations of natural justice. In one case, the L.A.T. laid down that when reinstatement was not ordered, wages must be paid for the full period from the date of dismissal to the date of the award of compensation. In another appeal, the L.A.T. reversed the award of the lower tribunal (directing payment of wages for the period of stay-in-strike) on the ground that discharge, against which the stay-in-strike was undertaken as a protest, was proper and justified. In some cases, the L.A.T. ruled that the statutory provision for retrenchment relief or provident fund scheme did not debar the tribunal from awarding a gratuity scheme.

#### 7. THREE IMPORTANT AWARDS REGARDING TEXTILE INDUSTRY

On January 17th, 1955, the Labour Appellate Tribunal (Bombay Bench, Shri Jeejeebhoy, Shri Reuben and Shri Campbell-Puri) gave three important awards in the disputes between the *Rashtriya Mill Mazdoor Sangh* and the *Millowners' Association, Bombay*, which soon after raised a great controversy. (These are accordingly indicated here at some length to enable the reader to follow their criticism by the worker's organisations, which is given in a subsequent section.)

##### *The Award Concerning Increase in Dearness Allowance and Basic Wages*

The first decision was given on appeals filed by both the parties against the decision of the Industrial Court, Bombay, which had turned down the claim of the R.M.M.S. for an increase in basic wages and for consolidation of basic wages and dearness allowance, and had awarded an increase in dearness allowance by 10%, for cost of living index above 325 (Bombay series).<sup>17</sup> By the awards made by the Industrial Court in May 1947 and April 1948, the wages of the workers in the textile mills of Bombay had been standardized. The minimum basic wage had been fixed at Rs. 30 per month at cost of living index 105. The dearness allowance, which was given to neutralize 90 per cent of the rise in the cost of living, had, in the case of the lowest paid worker, been fixed at 1.9 pies per day per point rise in the

17. In a dispute between the *Millowners' Association, Bombay*, and *Rashtriya Mill Mazdoor Sangh*. (17-1-55, 1955 I LLJ 329)

cost of living index over the pre-war figure. The award had also provided that a claim for revision of the dearness allowance could be preferred when the cost of living index were to reach 325.

Shri G.D. Ambekar, who appeared for the Rashtriya Mill Mazdoor Sangh, contended that the basis on which the minimum wage had been fixed by Standardization award of 1947 had since changed as a result of the report of the Fair Wages Committee and the decisions of the Labour Appellate Tribunal; that the basic wage of Rs. 30 did not provide for those additional amenities and comforts and miscellaneous expenses which were essential to a worker's well-being; that the minimum basic wage should be at least Rs. 46 or Rs. 47 according to calculations based upon a comparison with the wage of a comparable earner in 1939; that the concern which was unable to pay the minimum wage had no right to exist; that there ought to be a consolidation of basic wage and dearness allowance at cost of living index 280 and that the gap be filled by means of a flat rate of dearness allowance; that upon such consolidation the differentials under the Standardization award would have to be reconsidered. Shri Ambekar calculated that, on the basis of a scheme of balanced diet as suggested by Dr. Aykroyd, the lowest paid workman should be given roughly Rs. 165.50. He further said that he actually would reduce it to Rs. 156 (made up of Rs. 49.50 as basic wage and the rest as dearness allowance) as against Rs. 96 all told paid to the lowest paid worker (Rs. 30 basic wage plus Rs. 66 as dearness allowance at the then existing cost of living index of 365). This, he thought, would increase the existing annual wage bill of Rs. 25 crores by 17 crores of rupees. But as this would not be practicable under the prevailing circumstances, Shri Ambekar limited his demand to an annual advance of wages by 7 crores of rupees, and emphasised that there should be a minimum wage for all, which must be a fair wage irrespective of the capacity to pay. Shri Ambekar's scheme for consolidation of basic and dearness allowance provided for the basic wage of the lowest paid workman at index 280 which meant Rs. 91, and a dearness allowance of Rs. 21—a total minimum wage of Rs. 112 at cost of living index 365.

The Labour Appellate Tribunal ruled that the fixation of wages was a long-term plan and should not be readily or hastily disturbed. It was not disposed to accept the claim of the R.M.M.S.

that the then paid minimum total wage must fully neutralise the rise in the cost of living since 1939 and that a concern which was unable to pay such an amount had no right to exist. The L.A.T. felt that in the existing circumstances it did not matter to the workman whether his basic wage was increased and his dearness allowance reduced; he was concerned with his total emoluments. The practical advantage of the division of wages into basic and dearness allowance had disappeared by the introduction of compulsory State provident fund, retrenchment and lay-off reliefs and the employees' State insurance scheme, all being calculated on wages plus dearness allowance. The L.A.T. held that the consolidation of basic wages and dearness allowance at 280 would have no practical advantage except where particular circumstances justified it; on the other hand, it would upset the stabilised wage differentials and would create unnecessary ferment all over India for refixation of wages, which would be without any real merit or justification. The Appellate Tribunal thought that the right approach to the question would be to ascertain what would be a fair wage for the workman and whether the scale which he was receiving was inadequate, rather than to work out what the worker had received for living in 1939 and multiply the result by  $3\frac{1}{2}$ . The L.A.T. pointed out that if to the Rs. 30, given as the minimum wage under the Standardization award, were added the value of the educational and medical facilities and other amenities and benefits which were either provided by the mills or paid for by them by contribution to the provident fund and State insurance scheme, etc., the total would come to something rather near to Shri Ambekar's figure of Rs. 46. The L.A.T. added: "To say that this is low in the context of present-day wages is to be unrealistic...we are unable to accept Shri Ambekar's contention that so far as the minimum *total* wage is concerned the capacity of a concern is immaterial. We do not agree that the Fair Wages Committee's report asserts the proposition as advanced by Shri Ambekar, but *it has not been accepted by the Labour Appellate Tribunal and we are not prepared to adopt it*. Its acceptance would lead to impossible results. If we took the cost of living of 1939 for 2.4 units and gave full neutralization, the resultant figure would be so high that the industry could not possibly support it, and Shri Ambekar recognizes this feature of his case." (Italics by the author)

Referring to the capacity of the textile industry to pay a higher wage, the Labour Appellate Tribunal observed, "...by the application of the Full Bench Formula, and the social justice effected thereby, it would appear that in the last few years the available surplus was almost exhausted after payment of the bonus which was awarded, and the bonus so awarded amounted roughly to Rs. 2 crores each year. It was put to Shri Ambekar that on the basis of that Formula and on the existing profits there could not be any scope for increasing the wages of the employees and paying bonus at the same time. If the wages were increased by 7 crores of rupees as claimed by Shri Ambekar, there would be only a tiny amount of gross profits; and even if the wage bill was increased by even 2 crores of rupees it might eliminate the payment of any bonus unless gross profits were larger".

Shri Ambekar thereupon proceeded to attack the Formula which had been given by the L.A.T. on three points. He contended:

- (a) The sum of 72 crores of rupees which was taken into calculation by the Full Bench as the expected expenditure on rehabilitation, renewal and modernisation of machinery spread over fifteen years was excessive; that the figure was itself the result of a misunderstanding;
- (b) Six per cent dividend after payment of income-tax was excessive and should not have been granted;
- (c) Reserves capitalized into the share capital should not receive the same return as the shares which formed the original share capital.

As regards the figure of 72 crores of rupees for rehabilitation purposes, the Appellate Tribunal pointed out that it had been settled by the Full Bench of the Tribunal after consideration of all facts before it and had not been accepted under any misapprehension or mistake. It was a figure first placed before the Industrial Court in the Standardization award on the basis of the cost of machinery multiplied by  $2\frac{1}{2}$  or 3; it was again considered by the Industrial Court in the 1948 bonus award when it was contended and shown that the price of machinery had risen by 25 per cent. In appeal, the Labour Appellate Tribunal had in 1950 applied its mind to the subject and, following the accepted figure of the Tariff Board, had then come to the conclusion that Rs. 72 crores was the correct figure. The Labour Appellate

Tribunal added: "The fact that Rs. 72 crores was fixed was by no means a hasty or ill-considered decision; it was based on the original cost as to which there was no dispute, the only dispute being the question of multiples, and it must be realised that since the fixation of Rs. 72 crores there is evidence of a further rise in prices, but we declined in a later reference the claim of the mill-owners for an increase from 72 crores to 98 crores, observing that the figure of 72 crores could be reconsidered only 'on the basis of a substantial change of a stable character extending or likely to extend over a sufficient number of years so as to make a definite and appreciable difference in the cost of replacement'." The Labour Appellate Tribunal further noted:

"In order to displace this continuous line of decisions which hold that the millowners would require 72 crores of rupees spread over 15 years from 1947, Shri Ambekar has referred us to the report of the working party for the cotton textile industry. We do not think that the working party's report helps Shri Ambekar's case; and indeed the Millowners' Association have calculated on the basis of the working party's report that the total amount required for rehabilitation would be not 72 crores as allowed to them, but actually 108 crores.

"In...bonus appeal, the mills gave to the industrial court its own method of calculation and how the replacement which had been suggested would cost them 108 crores of rupees; and we cannot say that this claim is any less reliable than the claim of Shri Ambekar that the rehabilitation cost would be only 45 crores, for it must be remembered that the working party estimated for the replacement of only a portion of the machinery, and we have on record the basis of such estimate. What the rest of the machinery would cost is something between Shri Ambekar's *ipse dixit* of 15 crores and the mill-owners' calculations of 78 crores. ...Without in any way committing ourselves to the figures of the Mill-owners' Association, we cannot but feel that since 45 crores is conceded by Shri Ambekar himself this together with the remaining items could well reach a figure of 72 crores which we have held to be necessary in the past, if not more."

The Labour Appellate Tribunal concluded, "We have approached this problem with an entirely open mind. The decision of the Full Bench is final on a question of fact of this character, but we were quite open to conviction if Shri Ambedkar could have shown us that the estimate of (Rs.) 72 crores was based on a misunderstanding, error or misconception. Our careful reconsideration of the subject has convinced us to the approximate correctness of the figure of 72 crores and are satisfied that there is no mistake about it, and it is a figure which we cannot disturb."

As to the rate of dividend on shares, the Labour Appellate Tribunal pointed out, "It was agreed by the parties in the Full Bench case that 6 per cent after payment of tax (as actually calculated) would be a fair return to the shareholders. Nothing has been said to us which has in any way affected the validity of that agreed figure. ...The suggestion that the Full Bench gave 6 per cent without realizing that it was after tax paid is quite incorrect; figures were actually worked out in the tribunal's decision, and there never was any doubt as to what had been accepted and acted upon."

As regards the question of bonus shares, the Labour Appellate Tribunal pointed out that it had "already held in the case of Ruston and Hornsby (India), Ltd., that there should be no distinction between ordinary shares and bonus shares in the matter of dividends. ...It would be a deterrent to such capitalization if bonus shares were treated on a separate and less profitable basis."

Referring to the statement of gross profits after providing for the managing agent's commission for the years from 1947 to 1952, the Labour Appellate Tribunal observed that it could not be said that the condition of the industry had so improved since 1947 as to justify a major reconsideration of the wage structure. It was difficult to see how, assuming the same gross profits as in 1949, a higher wage bill amounting to 7 crores of rupees could be sustained. The Tribunal added: "The emoluments of the workmen have not remained static since 1947. In 1939 the total wage bill was 6.41 crores and the number of workers was 130,000. With the introduction of extra shifts the number of workmen increased to 210,000. In 1947 the wage bill was 26.19 crores (of rupees). In 1952 the number of workers was

210,000 and the wage bill increased to 29.47 crores, made up of basic 13.69 crores, dearness allowance 14.32 crores and bonus 1.46 crores. It will therefore be seen that the wages have risen in the ratio of 1:5 between 1939 to 1952, and on the face of it more than neutralize the full rise in the cost of living." The Tribunal emphasised that subsequent to the Standardization award there had been fresh burdens imposed upon the industry. While the profits of the industry had not uniformly exceeded 10 crores of rupees in the years after the Standardization award, and in the greater part of the period had fallen below it, the wage bill had steadily increased.

The Tribunal added: "It is Shri Ambekar's case that since the components of the industry have been controlled by Government, if one unit could make profit the others also could. *Prima facie* the duly audited balance-sheets of a concern indicate the true financial position of the concern, and it will be for Shri Ambekar to establish dishonesty or fraud. We cannot accept the view that just because one mill has made profits all the mills should have made profits, for the working of each mill is independent and each mill has its own problems. We do not think that Shri Ambekar himself would go to the extent of suggesting that the mills have shown losses just in order to escape payment of bonus. We do not, of course, exclude dishonesty or fraudulent management from consideration, but where the accounts have been duly audited and the balance-sheet has been duly presented, it will be for the person who asserts dishonesty or any managerial impropriety to prove it."

Considering all the factors having a bearing on the situation, the Labour Appellate Tribunal confirmed the award of the Industrial Court, subject to the qualification that increase in dearness allowance beyond cost of living index 325 will be on graduated percentage scale as indicated by it. (17-1-55, 1955 I LLJ 329)

#### *The Award Concerning Bonus*

In another award on January 17, 1955, in *The Millowners' Association of Bombay v. Rashtriya Mill Mazdoor Sangh*, the Labour Appellate Tribunal increased the bonus (for 1952) of 15% awarded by the Industrial Court to 20%, accepting the plea put forward by Shri Ambekar that the amount of 0.52 crores which

had been shown as expenditure for the year on account of the previous year's bonus would have to be added back for the purpose of ascertaining the gross profits for the year. In this case, the employers had contended that the amount of bonus given was too high, whereas the Rashtriya Mill Mazdoor Sangh had claimed a much higher rate of bonus. The Rashtriya Mill Mazdoor Sangh had also objected to the condition stipulated by the award that employees who had been dismissed on account of misconduct, causing financial loss to the company, would not be entitled to bonus to the extent of the loss caused.

The Labour Appellate Tribunal observed: "It is workmen's case before us that the depreciation fund, if utilized for the business of the year, should not be treated as working capital and should not be given a return. The depreciation fund is gradually built up for the purpose of rehabilitation. For a variety of reasons it may not be possible to immediately utilize the depreciation fund for the purpose of purchasing, rehabilitating or modernizing machinery. ...The money being in the hands of the concern is therefore utilized in the course of business. If not so utilized, it could be invested and could have earned a return, and we have no hesitation in coming to the conclusion that when employed as working capital it should earn the same return as other reserves utilized as working capital. The depreciation fund does not differ in any material respects from any other reserve."

Shri Ambekar argued before the Labour Appellate Tribunal that in the Bombay Industrial Relations Act the term "wages" included bonus and, therefore, bonus was "deferred wage" under the Bombay Industrial Relations Act until the living wage was attained. The Labour Appellate Tribunal pointed out, "Wages may by the definition include bonus; but wages and bonus are two separate concepts; and their place in the order of priorities need not be the same. Our Full Bench decision has been before the Supreme Court and the principles on which we came to the conclusion that bonus must be calculated after the ascertainment of the available surplus have not been disturbed. The Supreme Court in *Muir Mills case* moreover has held that Bonus is not a deferred wage. Because if it were so it would necessarily rank for precedence before dividends."

Referring to Shri Ambekar's proposal that the amount of bonus which the profit-making mills were ordered to pay

should be distributed amongst all the workmen of the Bombay textile mills including the workmen of the loss-making mills, and if necessary a pool of the amount of bonus payable by the profit-making mills should be created by way of a trust for the purpose of such wider distribution, the Labour Appellate Tribunal stated: "As the law stands we cannot accept the principle that the amount payable as bonus by one mill to its workmen can be utilized for the purpose of paying bonus to other workmen, thereby diminishing the amount of bonus payable to the workmen who have earned that bonus by their efforts of the year. Shri Ambekar has suggested that it would lead to greater harmony if the money earned by one group of workers is spent partly as bonus for the benefit of another group of workers who have not earned it during the year; but we take a contrary view as to its likely effects."

Regarding managing agents' commission, Shri Ambekar urged that it should be allowed at  $7\frac{1}{2}$  per cent on gross profits less depreciation. The Labour Appellate Tribunal pointed out that this was a matter of contract and the commission was legitimate revenue expenditure and that it was therefore not possible to swell the available surplus by an arbitrary reduction under that head.

Concluding, the Appellate Tribunal said, "The Formula which is the result of the Full Bench decision is based on a consideration of a number of principles, and certain weightage has been given to particular items which go towards the construction of that Formula. Opinions may vary as to the weightage so given, but the Formula is intended to be a balanced scheme for equating rights and liabilities, and that Formula must be taken and applied as a whole in order to achieve the necessary result." . . . "We acknowledge that Shri Ambekar's arguments on certain items were not altogether without substance; but we are dealing with a Formula, and to attack particular components in isolation is not helpful. A formula is designed to achieve an equilibrium, and the formula loses its validity unless it is taken as a whole." (17-1-55, 1955 I LLJ 430)

#### *The Award Against Unemployment Compensation*

On January 17th, 1955, the Labour Appellate Tribunal gave also

an award on a third dispute between the *Millowners' Association, Bombay*, and the *Rashtriya Mill Mazdoor Sangh*. In this case, the relevant standing order of the mills provided, *inter alia*, that at any time in the event of fire, etc., or stoppage of power supply...or other causes beyond the control of the company, the company might stop any department wholly or partly for any period or periods without notice and without compensation in lieu of notice. It further provided that during the period of such temporary unemployment the workmen would not be entitled to wages. Due to a cut in the electric-power supply by the Government the mills had to reduce their working hours and close down on certain days, and as a result the workmen had remained unemployed during the year for periods varying from 1 to 38 days. The Industrial Court had held that the workmen, having remained unemployed without any fault of theirs, must be compensated by the mills and it assessed the compensation at 50 per cent of their normal wages and dearness allowance for the period of their non-employment.

In appeal, the Labour Appellate Tribunal was of the view that there was no doubt that on the theory of social justice, the workmen would be entitled to compensation and at the rate of 50 per cent of the wages and dearness allowance, provided the claim was not otherwise barred. It, however, added that "for a claim which rests entirely on considerations of social justice, and is not in the nature of damages in contract or in tort, labour cannot look to the accumulated profits and reserves of the concern for its satisfaction; if any compensation is to be paid it will have to be out of profits, and in order that the labour force of another year may not suffer, such payments must come out of the profits of the particular year." The L.A.T. concluded that "as bonus for 1952 has been already paid as granted, and we are increasing it by our decision, there is no scope for the grant of compensation for that year." The Appellate Tribunal, accordingly, allowed the employers' appeal and set aside the order of the Industrial Court granting compensation. (17-1-55, 1955 I LLJ 437)

#### 8. THE WORKERS' ORGANISATIONS LAUNCH A COMPAGN AGAINST THE L.A.T.

The Report of the General Secretary of the I.N.T.U.C., Shri K.P

Tripathi, for the period November 1953-October 1954, to the Seventh Annual Session of the I.N.T.U.C. (Nagpur, 1st January, 1955) stated that *with the appearance of the new Labour Minister, Shri Khandubhai K. Desai, expectations had been raised about the abolition of the L.A.T.* It added that with the abolition of the L.A.T., the industrial tribunals would have to undergo some change. Workers and employers would have to be associated in the very act of adjudication; and unless that was done, mere abolition of the L.A.T. might create a void. The Report pointed out that the members of the L.A.T. were retired High Court Judges, who had no practical knowledge about industrial relations. Sometimes their judgements were adverse and harmful to the workers. The workers were finding it difficult to appear before the Appellate Tribunal due to long distances. The L.A.T. had not been able to evolve any method for setting standards of wages and working conditions for which function chiefly it had been appointed. Instead of creating uniformity in the decisions, it had brought about complexity and confusion by its awards.

The Report pointed out that early in the year 1954, the I.N.T.U.C. had given an important lead to the working class by calling upon it to demand higher wages rather than bonus.

The Report also referred to the difficulty experienced by the unions in taking up with management the grievances regarding working conditions of technicians and supervisors, etc., who had not been accepted by the L.A.T. as persons falling within the definition of workmen under the Industrial Disputes Act.

The I.N.T.U.C., at its Seventh Annual Session, held at Nagpur on 1st January, 1955, Shri S. R. Vasavada presiding, noted that the joint consultative machinery set up by the Government to arrive at 'agreed' decisions on industrial problems with a view to evolving 'agreed' norms and standards had not yet achieved any substantial results. It was of the view that settlement of disputes with the help of agreed formulae and accepted norms and standards was the best method to ensure peaceful progress of the labour and industry. The I.N.T.U.C. adopted a Resolution which, *inter alia*, said, "The conduct of some concerns in each industry creates difficulties for the workers by their showing losses instead of profits, especially when the price atmosphere indicates profits and even when a majority of the concerns show

handsome profits. The question of these loss-making units has created an atmosphere of distrust, suspicion and discontent."

*I.N.T.U.C.'s Criticism of the L.A.T. Awards*

*About Bombay Textile Industry*

In a statement issued to the press on January 23, 1955, commenting upon the three awards given on January 17th by the L.A.T. in the disputes between the Millowners' Association, Bombay and R.M.M.S.,<sup>18</sup> Shri G.D. Ambekar, President of the I.N.T.U.C. and President of the Indian National Textile Workers' Federation, said that the awards had undoubtedly put some money in the workers' hands by way of increase in dearness allowance and arrears thereof and increased quantum of bonus for 1952. But judged from the principles on which the judgements had been arrived at, and from the reasoning thereof, the awards had been a great disappointment. The Appellate Tribunal had been constituted for introducing uniform principles and giving a fair deal to the workers and the employers. The decisions given by the Tribunal in the past five years and the three latest decisions, however, clearly showed that the Tribunal had failed in its objective. This was partly due to the fact that the Judges of the L.A.T. suffered from lack of proper appreciation of industrial matters. The Judges had completely ignored all the statements and other information compiled from unchallengeable sources and filed on behalf of the workers, which were very vital to deciding the points at issue. The Judges had all the same shown great anxiety to accept anything and everything that was submitted and said on behalf of the employers. At some places the submissions and arguments on behalf of labour had not been properly understood and appreciated.

Shri Ambekar complained: "Whoever has heard the depreciation which is accepted as an item of cost and therefore free of income-tax should, if not utilised, be allowed interest as a prior charge simply because the original value of the block is maintained at cost and depreciation is separately calculated instead

18. The R.M.M.S., the Representative Union of the cotton textile workers in Bombay, had a membership of about 65,000 in 1952, 50,000 in 1953, and 80,000 in 1955.

The three awards affected 0.2 million workers in cotton textiles in Bombay.

of depreciating the block. . . . Even when deciding principles for wage fixation and compensation for forced unemployment the Tribunal has applied their Full Bench Formula for deciding quantum of bonus, which in its very nature is an addition to wages." Even the employers had conceded that if they were legally liable, they were not pleading inability for paying compensation for involuntary unemployment as a result of power shortage. Referring to the issue of rehabilitation, Shri Ambekar said that the L.A.T. had made wrong calculations; it had tried to proceed only on the basis of prices and had not considered some other important aspects of rehabilitation. Shri Ambekar felt that no fair-minded person would ever put forward the proposition that 40 crores of rupees were necessary for the renovation and modernisation of spinning and weaving machinery, and another 32 crores would also be required for boiler, electricity, and other processing machinery.

Shri Ambekar added that the L.A.T., in its latest award, in the dispute concerning increase in dearness allowance and basic wages, had proceeded on "mistaken notions" of minimum requirements of the lowest paid worker and on "unacceptable ideas" about the neutralisation of the rise in the cost of living. The L.A.T. had said that the total wage bill for 1,30,000 textile workers of Bombay was 6.41 crores of rupees in 1939, and it was Rs. 29.47 crores in 1952, for 2,10,000 workers. Wages had risen in the ratio of 1:5 between 1939 and 1952, and the cost of living had in the same period gone up only  $3\frac{1}{2}$  times. Shri Ambekar thought that it was illogical and erroneous to conclude from these "uncomparable" figures that increase in wages had more than compensated for the rise in the cost of living. Shri Ambekar added that in assessing its final capacity to bear additional burdens, the Tribunal had not taken into account the improved financial position of the industry in 1953, which was indicated even in the figures supplied by the employers themselves.

Shri Ambekar concluded, "The principles embodied and conclusions arrived at in these judgements which are directly dealing with the life-problem of over 2 lacs of workers in Bombay and which undoubtedly shape the destiny of several lacs of workers throughout India are highly detrimental to the interests of labour and therefore of the society. Such judgements are bound to shake the faith of the workers in the Labour Appellate

Tribunal. Surely time has come for workers to say 'God save us from the Labour Appellate Tribunal'."

Commenting on Shri Ambekar's statement, *The Indian Worker*, in its issue of 29th January, said: "Whatever be the limited services which the machinery of the Labour Appellate Tribunal might have rendered at a time when the workers were hardly united and the Government shirked intervening in favour of social justice, the Bombay judgements provide a conclusive case for the winding up of the machinery of the Labour Appellate Tribunal. Organised labour has been repeatedly demanding the scrapping of this ill-fitting agency, in consistency with the goal of socialism and social objectives which should now be governing all measures for national progress..."

Inaugurating the Seventh Annual Conference of the Indian National Textile Workers' Federation at Sholapur on 24-25th April, 1955, Shri Khandubhai K. Desai, Union Minister of Labour, said that he was not a supporter of the Appellate Tribunal. But when management and labour could not amicably resolve their disputes, such a machinery was inevitable.

The Conference expressed its serious dissatisfaction at the standards and priorities adopted by the Labour Appellate Tribunal in determining the quantum of bonus, and passed a Resolution which said, "These priorities merely result in depriving workers of bonus, without safeguarding interest of the industry in any manner. The Tribunal refuses to change its decision inspite of frequent protests, and even when employers have rejected the (Full Bench) Formula. The Conference therefore urges the Government to prepare a standard formula in consultation with the interests concerned and give its legal sanction." The Resolution added that the L.A.T. had not properly understood the meaning of rehabilitation and had assumed that a much larger amount would be required for the purpose. The textile industry, as a result, had already got at its disposal by way of reserves and depreciation fund much more than its real requirements of rehabilitation, and as a consequence the workers had been denied their proper share in the profits of the industry as bonus.

At its Nineteenth Session, held on May 27-28, 1955, at Trichur, the General Council of the I.N.T.U.C. pointed out that prior to the coming of the L.A.T. on the scene bonus used to be decided either by collective agreement and in certain cases on the

basis of the total profits in the industry in a centre. Since 1950, however, the Labour Appellate Tribunal had adopted a standard bonus Formula which exempted loss-making mills and concerns making meagre profits. In ascertaining the surplus available for bonus, the priorities in the Formula had been loaded in favour of employers and had resulted in depriving workers of their rightful share in the larger profits made by the industry.

The General Council of the I.N.T.U.C. urged the Government to evolve equitable norms and standards for distribution of bonus as expeditiously as possible and make suitable arrangements for the tribunals to adopt such norms and standards.

Shri Purushottam Thakkar, President, I.N.T.U.C., Bombay Branch, said on 30th June, 1955, that the opposition of his organisation to the L.A.T. was not due to the latter's anti-labour judgements in particular cases but against its introducing of some "wrong principles" in the adjudication of industrial disputes.

The Executive Committee of the Bombay Branch of the I.N.T.U.C., in a Resolution adopted in July 1955, viewed with grave concern the trend of the decisions of the L.A.T. and called upon all its affiliated unions to boycott it. The Resolution pointed out that the decisions of the L.A.T. had become a source of anxiety and discontent among the rank and file of labour and had shaken their faith in the ability of the Appellate Tribunal to fulfil the role which it was required to play. It had failed to establish healthy principles in solving labour disputes and meting out substantial justice to workers. Apart from what was given or taken away, decisions of the L.A.T. had established wrong principles or even conflicting ones and had thereby created confusion. At the annual Conference of the Bombay Branch of the I.N.T.U.C., held in August 1955, Shri G.D. Ambekar (the then President of the I.N.T.U.C.) advised the Bombay Branch not to boycott the L.A.T., as the Government was shortly going to introduce a Bill in Parliament for its abolition. The Bombay Branch adopted a resolution urging the Government of India to abolish the L.A.T.

#### *The U.T.U.C. Criticises the L.A.T.*

The Bombay unit of the U.T.U.C., at a meeting held on June 26, 1955, expressed 'grave concern' at the decisions of the L.A.T.

which had "shown a consistency of being anti-labour".

*The A.I.T.U.C. Boycotts the L.A.T.*

The Assistant Secretary of the A.I.T.U.C., Shri Balachandra Menon, writing in the issue of July 1955 of the *Trade Union Record*—the official organ of the A.I.T.U.C., said: "The workers of India irrespective of their affiliation have been demanding the abolition of the L.A.T. and the Ministry of Labour had also agreed for the same. However, the L.A.T. continues to give diverse decisions on technical industrial matters, thereby creating greater confusion and unrest among workers. Most of its recent decisions have been anti-labour..." Shri Menon pointed out that in several cases the L.A.T. had reversed the awards of the lower tribunals and lowered the quantum of bonus granted to the workers. For instance, in the dispute between the employees and management of *International General Electric Company*, the L.A.T. had reduced the quantum of bonus from 4 months' basic wages to 2 months', and in the case of *Associated Cement Companies, Bombay*, from 4 months' to 3 months' basic wages. Shri Menon complained that the latest stand taken by the L.A.T. was that the workers' right to bonus was not based on the right to share the profits of the concern; bonus was only a measure to shorten the gap between the living wage and the actual wage. Such a definition of bonus went against some of the views expressed by the L.A.T. earlier and also against all accepted understanding on the issue of bonus. Even as far back as 1950 the L.A.T. had remarked, "As both labour and capital contribute to the earnings of an industrial concern, it is fair that labour should derive some benefit if there is surplus after meeting prior and necessary charges." Shri Menon concluded, "These and other recent decisions of the L.A.T. have clearly shown that on most of the issues they have taken only a juristic stand, which often is at variance with all principles of social justice and accepted understanding.... It is high time that the principle of compulsory adjudication is given a go-by and the L.A.T. is abolished without any further delay."

A joint meeting of the affiliated and associated unions of the Bombay State Trade Union Committee of the A.I.T.U.C., held on 9th July, 1955, unanimously adopted a Resolution calling on all trade unions to boycott the L.A.T. The Resolution

pointed out that the constitution of the L.A.T. in the year 1950 was "never approved by trade union movement in this country as the step was bound to lead in extraordinary delay in the solution of industrial disputes and also to a situation of uncertainty as regards workers' demands." The Resolution further said that the decisions of the L.A.T. had introduced "baffling contradictions in industrial relations from State to State and even within single State", and "far from laying down agreed principles" it had led to "a state of utter anarchy and chaos in the domain of industrial relations and particularly as regards working class rights to better service and wage conditions."

The L.A.T. judgements, the Resolution emphasised, betrayed a lamentable lack of understanding of labour problems on the part of the Judges of the L.A.T., and bore "an obvious and unmistakable stamp of being pro-employer and anti-labour, reactionary in every line and disastrous to the just rights of the working class for better and fair deal."<sup>19</sup> The Resolution concluded that the latest trend of the L.A.T. decisions after the modification of the L.A.T. Bank Award by the Government in favour of the management of the banks, had taken a form of "open and shameless pleading for the employers" and unless immediate steps were taken to call a halt to such a state of things the Indian working class would be exposed to "unprecedented loss".

#### *The I.N.T.U.C. Explains its Stand Against the L.A.T.*

On July 14, 1955, the I.N.T.U.C. submitted a Note on 'Labour Policy in the Second Five Year Plan' to the Vice-Chairman of the Planning Commission, Shri Gulzari Lal Nanda, also Minister of Planning and Employment. This Note was subsequently elaborated into a full Memorandum, containing a review of the past labour policy of the Government and making suggestions for the future. Referring to industrial relations, the Memorandum

19 It is understood that one of the reasons (apparently of not great significance but psychologically very important) for the opposition of the workers' organisations to the L.A.T. was the discourteous treatment meted out by some of the L.A.T. judges to the workers' representatives who appeared before them. (Interview with some prominent labour leaders)

noted that there was a growing tendency on the part of the employers to file appeals to the L.A.T. against the decisions of industrial tribunals. This was quite understandable, as the L.A.T. had in most of the cases reversed the decisions of the tribunals even where there had been no serious violation of natural justice. The expectation that the Labour Appellate Tribunal would create "uniformity of principles" had also not been fulfilled. On the contrary, the decisions of the L.A.T. had led to more diversity of judgements and had been characterised by High Courts in some cases as perverse and devoid of common sense. Thus, apart from justice delayed, the Appellate Tribunal had created more injustice and more dissatisfaction between both the parties. The Memorandum of the I.N.T.U.C. emphasised, "*...It might seem that the I.N.T.U.C. is trying to make out a case that the demand on behalf of labour for the abolition of Labour Appellate Tribunal is because of the fact that recently judgements of the Labour Appellate Tribunal have gone against labour.* (Italics by the author) This demand has recently gathered momentum because of the complete ignorance reflected in the decisions of the Labour Appellate Tribunal of industrial matters and their proper solutions. Even some of the fair minded employers have begun to realise the futility of taking the cases to the (Appellate) Tribunal. Though this matter of the abolition of the Labour Appellate Tribunal is before the Government for more than three years and though the said abolition was implicit in the recommendations of the First Five Year Plan, the Labour Appellate Tribunal continues to remain and is still going strong. We are afraid that the delay in the abolition of the Labour Appellate Tribunal is caused by considerations other than merits of the case."

The I.N.T.U.C. complained that the industrial tribunals and the Appellate Tribunal had not shown any care for the tripartite agreements reached at the national level, nor for the "principles" evolved by the various committees and commissions and accepted by the Government or the parties.

As regards wages, the I.N.T.U.C. Memorandum pointed out that the L.A.T. had failed to appreciate the background and the contents of the recommendations of the Committee on Fair Wages. The Appellate Tribunal had at one time said that it accepted the principles regarding minimum wage, laid down in

the Committee's report, but its decisions did not reflect any such acceptance. The L.A.T. had only partially accepted the Committee's definition of the minimum wage—only for purposes of the basic wage—and had deliberately chosen not to include dearness allowance in its concept of the minimum wage. The Appellate Tribunal had accordingly held that even in the case of workers on a subsistence level the dearness allowance should not be so increased as to compensate fully the rise in the cost of living. In the face of the L.A.T. having ignored the unanimous recommendations of the tripartite Fair Wages Committee with regard to the minimum wage, "the chances of labour getting a square deal at its hands in respect of fair wages" were extremely remote.

The I.N.T.U.C., in its Memorandum, further said that the L.A.T. was confused in its thinking about the place of wages in industry's economy. The L.A.T. thought that even for paying a fair wage the industry should first show a surplus, after meeting all the prior charges mentioned in the Full Bench Formula. Wage was an item of cost and no profit could really accrue without first meeting the legitimate wage claim in full. The later decisions of the Labour Appellate Tribunal were contrary even to such an elementary principle of Economics.

On the much disputed question of bonus, the Memorandum stated that allowing the full statutory depreciation as a prior charge even though the industry in actual practice provided for a lesser amount was "perverse"; it had led to "untimely purchase of large scale machinery" and deprived the workers of their due share in the profits of the industry.

Referring to the return on the reserves, under the Full Bench Formula, the Memorandum stated that it was difficult to understand why reserves used as working capital, built up by depriving workers of living wage, should be entitled to any return at all. In any case, such a return should not exceed the difference in the interest which the industry would normally have to pay if the reserves were deposited in the bank and working capital was taken on loan.

The Memorandum complained that a much higher rate of managing agency commission was allowed under the terms of contract in some industrial centres than in others. This, the Memorandum stressed, had led to a great resentment among the

workers whose claim to bonus had been adversely affected by the higher return on managing agency.

*The L.A.T. : A Superannuated Anachronism*

On July 16, 1955, *The Indian Worker*, giving vent to the rising opposition of workers to the L.A.T., said: "At the end of seven years of Freedom, workers find the over-taxed machinery of the L.A.T. superannuated. And the demand is going up fast throughout the country for the abolition of this superannuated anachronism". The organised workers had patiently bore the vagaries of the L.A.T. for seven long years. The last straw on the camel's back, however, was provided by the "astounding injustice" which the Appellate Tribunal had inflicted on the workers by dismissing their time-honoured claim to bonus on the basis of the profits of the industry as a whole. Whereas the Textile Enquiry Committee had conceded the need for rehabilitation of machinery only in the case of textile, jute and steel industries, the L.A.T. had gone beyond the findings of the Committee and allowed the claim to rehabilitation of machinery to every industry which had cared to lodge such a claim.

The *Indian Worker* emphasised that the working class could no longer bear the 'luxury' of the L.A.T. Its proceedings had often tended to be dilatory, involving not only delay but also long travel and heavy costs to workers. Often, at the end of prolonged agony of the L.A.T. proceedings, the workers found themselves confronted with stay orders, benefiting the employers. The reference of disputes to the L.A.T. had operated as a veto in the hands of employers to stifle trade union activity, as under the law the workers concerned could not resort to strike during the pendency of the proceedings before the L.A.T. And, finally, even after footing such an "extravagant bill", the workers had been unable to secure any uniformity of principles at the hands of the L.A.T. The L.A.T. awards had shown divergencies and created confusion only.

Shri K.P. Tripathi, the I.N.T.U.C. General Secretary, in his Report for November 1954 to April 1956 to the Eighth Annual Session of the I.N.T.U.C. (Surat, 6th May, 1956) recommended that an expert committee of the Planning Commission should be set up to evolve a formula of bonus for each industry. Shri G.D. Ambekar, in his Presidential address at the Eighth

Annual Session, said that the abolition of the L.A.T. would help secure speedy justice for the workers, as under the (proposed) three-tier system industrial disputes would mostly be settled at initial stages.

The *Indian Worker*, in an editorial entitled "Death Blow to 'Worker' Trade Unionists" on September 26, 1955, noted:

"...L.A.T. has misinterpreted the recommendations of the Fair Wages Committee. It has refused to accept Planning Commission's recommendations. On the issue of bonus it has evolved a Formula which has done considerable harm... The Formula...is against the recommendations of an expert body like the Tariff Board. It has treated the cost on welfare activities as part of wages and has accepted the employers' contention that profits accrued from selling waste cotton cannot be claimed by workers."

Referring to the L.A.T. award concerning *Lakshmi Devi Sugar Mills v. Jadunandan Singh*,<sup>20</sup> the *Indian Worker* said:

"By giving this decision, the Labour Appellate Tribunal has cut at the very root of the trade union movement. The rank and file of workers will not come forward to conduct the affairs of the unions. On the other hand, there is a charge against the Indian trade union movement: that it is run by outsiders. Therefore, a limit should be placed on the number of outsiders in the (union) executive and there is a growing demand that this limit now should be reduced to 25%. It, therefore, means that every encouragement is to be given to workers who want to conduct their union affairs. The question, therefore, arises: does this decision encourage or create suitable atmosphere in this direction? It does not. The judgement is, therefore, not only perverse and

20. In *Lakshmi Devi Sugar Mills v. Jadunandan Singh*, the management had retrenched the employee for his using abusive and objectionable language in a letter to it as the General Secretary of the Chini Mazdoor Sangh. The lower tribunal ordered reinstatement. In appeal, the L.A.T. set aside the lower tribunal's award on the ground that misconduct of the employee had been proved under the procedure laid down in the Standing Orders and it was not open to the tribunal to intervene unless it considered the punishment awarded was so severe as to give the indication of victimisation. 17-3-55, 1955 II LLJ 250)

thoughtless but utterly disregards the fundamental right of the worker. This judgement has, therefore, justified (that) the Labour Appellate Tribunal should be abolished immediately."

#### 9. THE EMPLOYERS URGE THE RETENTION OF THE L.A.T.

Referring to the agitation carried on by the workers' organisations for the abolition of the Labour Appellate Tribunal, the Indian Chamber of Commerce, Calcutta, in a letter addressed to the Secretary, Ministry of Commerce and Industry, towards the end of July 1954, urged the Government of India not to take any steps for the abolition of the L.A.T. It pointed out that the Appellate Tribunal had brought out some uniformity in industrial adjudication. The Chamber added, "The abolition of the Labour Appellate Tribunal will accentuate the 'vagaries and serious anomalies' and aggravate 'confusions and uncertainties' arising out of the awards given by the industrial tribunals". The Chamber concluded that the L.A.T. should continue till some standards and basic principles were evolved for the guidance of industrial tribunals; otherwise, the country would revert to the conditions which prevailed prior to the L.A.T. and its general economic progress would be retarded, in particular the development and growth of small industrial organisations. The existing appellate machinery with all its deficiencies and shortcomings was still the best under the prevailing circumstances.

In September 1954, Indian Colliery Owners' Association, Dhanbad, Bengal Millowners' Association, Calcutta, and Indian Paper Mills' Association, Calcutta, requested the All-India Organisation of Industrial Employers, to strongly oppose the proposals for the abolition of the Appellate Tribunal. All the three associations felt that the Appellate Tribunal had helped considerably in laying down uniform principles and precedents on important labour matters and had exercised a sobering influence on the decisions of lower tribunals, and that its abolition would lead to disastrous consequences at a stage when no stability had yet been achieved in labour management relations.

The Employers' Association of Northern India, in its letter dated 14th January, 1955, to the All-India Organisation of

Industrial Employers, said that the decision of the Government to abolish the L.A.T. had come to it as a "rude shock". Conceding that the existing number of judges was inadequate for the purpose of setting up new tribunals under the proposed three-tier adjudication machinery, the Association urged, "...if the State Government is unable to find judges for the tribunals, it is a very good reason for the retention of the present Labour Appellate Tribunals (i.e., L.A.T. Benches) which consist of retired Judges of the High Court." The Association pointed out that the L.A.T. had, since its establishment, helped to build up case law on important labour matters. "If it were not for the very curious and sometimes perverse awards given by some adjudicators ...the cases coming before the L.A.T. would be fewer and more expeditiously dealt with." The L.A.T. was disposing of cases more expeditiously than the High Courts and the Sessions Courts. Adjudicators had a bias in favour of the working class and when, on appeal, their decisions were reversed, labour would become dissatisfied and that was the reason why the labour leaders were keen on abolition of the Appellate Tribunal.

The Merchants' Chamber of U.P., Kanpur, sent a communication early in February 1955 to the Minister of Labour and Social Welfare, Government of Uttar Pradesh, requesting that "the proposal for the abolition of the Labour Appellate Tribunal be as strongly resisted as possible at every forum". It argued that the very fact that there were cases more than three years old pending to be heard in Kanpur alone and that an adequate number of judges could not be found to man the lower tribunals justified the retention of the L.A.T.

The Chamber pointed out that adjudicators, who looked up "for their position and prospects entirely... to the executive machinery of the various State Governments in the Labour Departments" were always obsessed by a psychosis of 'social justice'. It added, "These adjudicators tread on paths where angels fear to tread by propounding theories and principles that cut at the very root of our national economy". The very existence of the L.A.T. acted as a curb on giving of "diametrically opposed and contradictory adjudication awards" in India. The Chamber felt that the abolition of the Appellate Tribunal was bound to "worsen industrial relations".

At its Twenty-Seventh Session held at New Delhi on 5-6th

March, 1955, the Federation of the Indian Chambers of Commerce and Industry by a Resolution took note of the efforts made by the Joint Consultative Board of Industry and Labour to simplify and streamline the adjudication machinery under the Industrial Disputes Act, 1947. The Federation strongly felt that the proposal to abolish the L.A.T. needed more careful consideration. The Resolution said that the L.A.T. had come into existence in 1950 as a result of the realisation on the part of the Government of India of the anomalies and the consequent unrest created by the haphazard awards made by different industrial tribunals. Despite some instances where different Benches of the L.A.T. had given contradictory decisions, the L.A.T. had, to a considerable extent, achieved the purpose for which it was set up, namely, uniformity in industrial awards. The L.A.T. was gradually building up a case law on industrial relations which was being used by lower tribunals as a guide. As this process of formulating the case law was half-way through, the abolition of the L.A.T. would mean not only undoing of the previous good work but also return to a state of disorder and confusion.

The Resolution added that the past experience had shown that if the award of the industrial tribunal was final, it was bound to result in discontent among the parties and create an impression of possible miscarriage of justice, even if it did not actually result in it. The Resolution, therefore, urged the retention of the appellate authority. In case, however, it was ultimately decided to do away with the L.A.T., the Federation strongly urged that the lower tribunal which was to decide minor disputes must be presided over by a sitting District or Sessions Judge; and the higher tribunal, by a sitting High Court Judge and assisted by a representative each of the employers and the workers.

A note in the issue dated April 1, 1955, of the *Eastern Economist* entitled "Exit the L.A.T." by Croesus said, "...the reported decision of the Government to do away with the L.A.T. was the second serious attempt—the first being the Constitution (Fourth Amendment) Bill—on the part of the powers-that-be to abridge the rights, albeit of a section of the public, to get their grievances redressed in an easy and effective manner by having recourse to appeals from a lower to a higher, and if need be, to the highest court of law in the country, untrammelled by any restrictions, especially on the Executive". It added: "The

rather tendentious report in the Press gives one the wrong impression that representatives of both employers and employees have themselves suggested the principles for creating a new machinery for settlement of disputes on the lines proposed and inferentially, therefore, for the abolition of the L.A.T. Employers' representatives have, as anyone knows, vehemently opposed the proposal for the abolition of the L.A.T. and it was only when they were told by the Union Minister of Planning that the Government had decided to abolish the L.A.T. that they requested that at least high judicial officers, appointed preferably by the Union Law Minister, should preside over the newly proposed tribunals. The provision that there are to be no appeals from the National Tribunal except to the Supreme Court may save time, but, if, at any time, the decision goes against labour, can labour be expected to put itself to all the expenses of taking the matter to the Supreme Court?"

"This Week's Survey" in *Commerce*, dated 2nd April, 1955, referring to the decision of the Government of India to abolish the Labour Appellate Tribunal, said: "The State Governments and the labour unions are said to have welcomed this decision, while the employers are viewing it with some concern. It is true that the employers had agreed, at the bipartite conference held in July 1954, to certain changes in adjudication machinery, but the bipartite agreement envisaged a slightly different set-up for the constitution of State Tribunals—a condition which seems to have been ignored by the Government now."

The *Commerce* went on to add: "In recent years, the L.A.T., cumbrous though this machinery might have been, has been a stabilising force. With the abolition of the L.A.T., there will be no case law that can serve as a guide to erring judges. If the labour tribunals are made a wing of the judiciary, as was envisaged in the bipartite agreement, it will then lead to the development of a healthy tradition of case law. The system now proposed is likely to satisfy only the interests of State Governments which have all along clamoured for unfettered freedom in the field of settlement of labour disputes. But this would undo the good work, in the shape of bringing about some uniformity in decisions affecting industrial relations, done by the L.A.T., since it was established (over) four years ago. Naturally, it would re-establish the chaotic conditions that prevailed prior

to (August) 1950, which led to the establishment of the L.A.T. Perhaps, no greater disservice can be done to jeopardise industrial peace than the contemplated amendment to the Industrial Disputes Act."

The Employers' Federation of India noted in early July 1955 that during June and July that year, several trade union organisations including the I.N.T.U.C. had started a campaign against the L.A.T. The President of the Federation, Sir Homi Modi, issued a Press statement on 12th July, 1955, calling upon the labour leaders to realise the implications of their tirade against the L.A.T. The statement said:

"It is time labour leaders realised the character and implications of the campaign they are waging against the L.A.T. It is true that for sometime they had been asking for its abolition; but the arguments they are now advancing would suggest that they were questioning the competence and impartiality of the Tribunal. Recent decisions given by the Tribunal rejecting some of the demands made by the labour interest would appear to provide the reason for the sustained propaganda now being carried on and which has culminated in a threat to boycott the Tribunal for its 'anti-labour attitude'. These are pressure tactics of a questionable character. Labour unions might as well claim the right to appoint men of their own choice who might be depended upon to apply the right principles, as the unions conceive them, and to uphold whatever demands are made by them. The issue is not one of social justice; it is purely and simply that labour must be given whatever it feels are its due and judicial processes are only intended for securing that end."

The *Eastern Economist*, in 'The Week's Notes', in the issue of 30th September, 1955, said that the abolition of the L.A.T. was bound to affect the prestige attached to labour awards; further, there was no guarantee that the decisions of the proposed national tribunal would create greater satisfaction or confidence than those of the Tribunal which was being given short shrift. It emphasised that no single labour award could ever hope to satisfy both the employer and the employee, and the Government should not have so easily yielded to pressure from one side.

The Council of the Merchants' Chamber of U. P.

Kanpur, in its Report submitted to the Twenty-Fourth Annual General Meeting of the Chamber on 16th January, 1956, stressed that the accumulation of appeals pending before the L.A.T. was attributable chiefly to the inadequacy of the strength and not to any inherent defect in its organisation. Referring to the clarificatory character of the decisions of the Tribunal in respect of complicated constructions placed on provisions of various labour laws, it pointed out that in the absence of an authentic judicial body such as the L.A.T., it would not be possible "to stabilise the working of statutes impinging upon labour." The Chamber urged the Labour Minister of U.P. to resist the proposal for the abolition of the L.A.T.

The Managing Committee of the Punjab Federation of Industry and Commerce, Amritsar, in its Report for the year 1955, strongly opposed the proposal for the abolition of the L.A.T. which, the Federation thought, was against the spirit of the Indian Constitution, and ran counter to all notions of democracy and justice. The fact that a large number of decisions of the lower tribunals could not be sustained on appeal was a sufficient justification for the retention of the L.A.T. As regards delays in the giving of decisions of the L.A.T., the Committee contended that despite instances of abnormal delay in the disposal of appeals by the High Courts, nobody had ever suggested their abolition. The singling out of the L.A.T., which had proved very useful and which had laid down sound principles of social justice, was not fair enough. If the Government had decided to abolish the L.A.T. as a measure of economy, the right of appeal should not be taken away and appeals should be allowed to the Division Bench of the High Court.

#### 10. LABOUR PANEL FOR THE SECOND FIVE YEAR PLAN

The Planning Commission set up in September 1955 a tripartite Panel<sup>21</sup> of 18 members to advise it on the formulation of labour

21. The Panel consisted of the following: Shri Gulzari Lal Nanda (Chairman), Union Minister of Labour; Shri N.H. Tata and Mr. O.T. Jenkins (E.F.I.); Shri G.D. Somani, Shri S.P. Hutheesing and Shri G.L. Bansal (A.I.O.I.E.); Shri H.P. Merchant (A.I.M.O.); Shri G.D. Ambedkar, Shri S.R. Vasavada, and Shri K.P. Tripathi (I.N.T.U.C.) Shri R.A.

policy for the Second Five Year Plan. The memorandum on labour policy placed by the Ministry of Labour before the Panel stated as follows with regard to bonus and profit-sharing:

"In recent years disputes about bonus payment have become widespread. A tripartite Committee evolved a scheme of profit-sharing in 1948, but its recommendations were not unanimous. Subsequent efforts made by Government to evolve a scheme commanding adequate support did not succeed. In the absence of any statutory provision for calculation of bonus, the Labour Appellate Tribunal has evolved for itself certain broad rules for the purpose, but these have not worked satisfactorily. There is some measure of confusion even among tribunals as to the nature of bonus. Is it of the nature of a deferred wage calculated to narrow the gap between the wages paid and the living wage or it is of the nature of a share in profits? This confusion has affected the quantum of bonus awarded in certain cases and has caused discontent among labour. It has been a general complaint that provisions made for prior claims in the calculation of the "available surplus" are extravagant. In these circumstances, it seems necessary for Government to take the responsibility for evolving a statutory scheme which will, in effect, remove bonus or profit-sharing from the sphere of justiciable disputes. The statutory scheme could, in the first instance, be confined to a few industries so that if any defects were noticed, they could be removed before it was extended generally to other industries. This scheme could be something analogous to the Dividend Equalisation Scheme. A ceiling might be fixed at three months' basic wages and the excess, if any, in some years, could be deposited in a Bonus Fund from which in slump years also some bonus could be paid; the minimum might be fixed at fifteen days' basic wages irrespective of profit

Khedgikar and Shri Asoka Mehta (H.M.S.); Shri C.P. Parikh, Employers' representative from Ahmedabad; Shri S.A. Dange and Shri A.K. Gopalan (A.I.T.U.C.); Shri M.K. Bose (U.T.U.C.); Shri V.V. Giri; Shri R. Venkataraman (I.N.T.U.C.); and Shri V.K. Menon (Director, I.I.O., India Branch). Shri B.N. Datar, the then Director and at present Chief, Labour and Employment Division, Planning Commission, was Secretary to the Panel.

or loss. Within these two limits, the annual bonus should be fixed on the capacity of the unit to pay. The other objective of regularity of attendance could also be simultaneously achieved by linking the payment of bonus with a minimum attendance, say three-fourths of the total number of available days. As the main object of the proposed legislation is to remove bonus from the arena of annual conflict, it will be necessary statutorily to amend the form of the balance-sheet so that it may show at a glance the number of months' basic wages payable to workers as bonus along with the main steps of the calculation as certified by the duly appointed auditors. The auditor's certificate should ordinarily be accepted as final, but where the appropriate government is satisfied that there are *prima facie* grounds for believing that a mistake has been made, it should be open to the Government to order a further audit by way of appeal."

The Memorandum also recommended the appointment of a Wages Commission (1) to consider measures for rationalising the existing structure of basic wages and dearness allowance, (2) to examine whether the existing wages system was consistent with the national objectives of socialistic pattern of society and (3) to recommend steps for automatic adjustment of wages.

The Sub-Committee on 'Wages, Productivity and Rationalisation' of the Panel,<sup>22</sup> at its meeting held in September 1955,

22. At the meeting of the Industrial Relations Sub-Committee of the Panel, held in September 1955, a view was expressed that compulsory adjudication had undermined the strength of trade unions, and if compulsory adjudication were given up, 90% of the disputes would, it was said, be settled voluntarily through conciliation and arbitration. In written comments, the employers' representatives subsequently stated that immediate total abolition of compulsory adjudication would not be a practical proposition; that issues once settled should not be raised again for a period of 3 years; that appeals should be restricted to certain specified matters only; and that adjudication should be available as a measure of last resort if direct negotiations and voluntary arbitration were to fail. The representative of the I.N.T.U.C. and the H.M.S. observed that compulsory adjudication was a necessity due to the weak trade unionism and the absence of a well-established system of settlement of disputes by mutual negotiations and voluntary arbitration. The representative of the A.I.T.U.C. stated that compulsory arbitration was harmful. At the meeting of the full Panel, Shri V.V. Giri suggested

decided that the basic principles for determining bonus should be thrashed out by the parties concerned after an expert examination by the Planning Commission. As no single formula could be applied to all industries, different formulae for different industries would need to be devised. Till that time, the existing arrangements of settlement of disputes through Industrial Tribunals should continue. While recognising the need for setting up a Wages Commission to evolve a wage policy in consonance with the socialistic pattern of society, as proposed in the Memorandum, the Sub-Committee stressed the main difficulty in the functioning of such a Commission, viz., lack of data. It felt that, instead, Wage Boards, on the lines of the Wage Boards set up in Bombay, should be set up immediately for all important industries.

At the meeting of the Labour Panel as a whole, Shri N.H. Tata (E.F.I.) opposed the principle of bonus in the form of profit-sharing but conceded it as a compensation for sub-standard wages. Shri H.P. Merchant (A.I.M.O.) agreed that compulsory arbitration might be retained as a measure of last resort provided the existing adjudication machinery was simplified, as proposed under the three-tier system of labour tribunals. He emphasised that appeals should be discouraged. Whatever machinery were set up, it should work under the Law Ministry and should form a part of the judicial system of the country. He was opposed to participation of labour in profits through payment of bonus. Shri R.A. Khedgikar (H.M.S.) said that he would prefer to consider bonus as a deferred wage where wages were low and as profit-sharing in other cases. The Hind Mazdoor Sabha, in a written communication, stated, "H.M.S. is not very keen about the profit-sharing bonus. It would prefer an increase in the basic wage. If the system of paying bonus is to be continued H.M.S. thinks that the quantum of bonus should be fixed by collective bargaining, and failing that,

the suspension of compulsory adjudication for a period of 3 years as an experimental measure in the interest of better industrial relations.

In an "Analysis of Indian Business Opinion" after a poll of business leaders, the Indian Institute of Public Opinion had come to the conclusion in January 1955 that the system of compulsory adjudication was working reasonably well and the alternative might easily be "a combination of exploitation by the more unscrupulous employers and violence by the more extreme workers".

by adjudication. A tripartite commission may be appointed to formulate the guiding principles governing the grant of bonus." Shri R. A. Khedgikar (H.M.S.) and Shri S.P. Dave (I.N.T.U.C.), both favoured the appointment of a Wages Commission as suggested in the Memorandum of the Ministry of Labour. Shri N. H. Tata (E.F.I.), Shri G. D. Somani (A.I.O.I.E.) and Shri H. P. Merchant (A.I.M.O.) supported the appointment of tripartite Wage Boards on the ground that in the absence of sufficient data and in face of regional and inter-industry variations it would not be possible for the proposed Wages Commission to deliver the goods.

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The final text of the Second Five Year Plan published in June 1956 recommended as follows:

- (1) Greater emphasis should be placed on avoidance of disputes at all levels, including the last stage of mutual negotiations, namely conciliation. Once a dispute arose, recourse should be had to mutual negotiations and voluntary arbitration. The necessary machinery for the purpose should be built up by the Central and the State Governments. A standing joint consultative machinery would effectively reduce the extent of industrial unrest.
- (2) For the successful implementation of the Plan increased association of labour with management would be necessary. This could be achieved by providing for councils of management, consisting of representatives of management, technicians and workers. To begin with, the proposal should be tried out in large establishments in organised industries.
- (3) The observance of stricter discipline, both on the part of labour and management, could not be imposed by legislation; it would have to be achieved by organisations of the employers and the workers by evolving suitable sanctions of their own.
- (4) Reduction in the number of outsiders as office-bearers of trade unions would very likely create a gap in the field of executive personnel for trade union organisations.

Training the workers in trade union philosophy and methods would therefore be necessary if the workers are to become self-reliant in the matter.

- (5) The existing machinery for the settlement of disputes, namely, industrial tribunals, had not given full satisfaction to the parties concerned. A more acceptable machinery for settling wage disputes would be one which would give the parties themselves a more responsible role in reaching decisions. An authority like a tripartite wage board consisting of an equal number of the representatives of the employers and the workers and an independent chairman would probably ensure more acceptable decisions. Such wage boards should be instituted for individual industries in different areas.
- (6) Principles relating to the settlement of bonus and profit-sharing would require further study before any arrangement acceptable to all the parties could be evolved. In the meanwhile the existing arrangement for the settlement of such disputes through the existing industrial relations machinery should continue.

#### 11. THE INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) AMENDMENT ACT, 1955

With a view to expediting the disposal by the L.A.T. of applications under Section 22 and Section 23 of the Industrial Disputes Act concerning non-alteration of conditions of service during the pendency of proceedings, the Government of India promulgated an Ordinance on 21st June, 1955. The Ordinance empowered the Chairman of the L.A.T. to dispose of the applications sitting singly, or transfer them to industrial tribunals (constituted under the Industrial Disputes Act, 1947, and specified by the Government of India for the purpose) or to a single member of the L.A.T. The Ordinance also provided that no further appeal would lie to the L.A.T. in respect of such applications. At the end of February 1955, there were 1,673 applications pending before the L.A.T.

Moving the Industrial Disputes (Appellate Tribunal) Amendment Bill, 1955, in the Lok Sabha, on 9th August, 1955, to replace the Ordinance, Shri Abid Ali, Deputy Minister of Labour,

said that more than 1,600 applications under Sections 22 and 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950, were pending before the Appellate Tribunal towards the end of June 1955. While the number of applications filed per month was near about 100, the rate of disposal ranged between 80 and 85. Under the existing law, every application had to be heard by a bench or a tribunal consisting of at least two judges. The applications were usually of an individual nature and were not really important enough to merit consideration by two judges of the Appellate Tribunal. The time that the judges would devote to them could with greater advantage be spent on hearing appeals proper. It was, therefore, proposed under the Bill to empower a single member of the Appellate Tribunal and as also of the industrial tribunal, to dispose of such applications.

Shri Tushar Chatterjea (Communist Party) suggested that a provision should be added to the effect that the disposal of all cases by the L.A.T. should be made after proper hearing in which both the parties would be represented. The experience in West Bengal had been that the workers were not always heard; they were simply asked to submit their views in writing and were not given an opportunity to present themselves before the Appellate Tribunal to refute or counter the arguments of the employer.

Shri Chatterjea added that the workers all over the country, irrespective of their political opinion—A.I.T.U.C., I.N.T.U.C., H.M.S. and U.T.U.C.—were unanimous in their demand for the abolition of the Labour Appellate Tribunal. In Bombay, all the different trade union organisations had unanimously passed a resolution that the Labour Appellate Tribunal should be abolished and some lawyers connected with labour cases were reported to have boycotted it. In judging the main issues of labour disputes the L.A.T. had taken such a legalistic view and avoided considerations of social justice that in majority of cases its decision had been to turn down the awards of the lower tribunals. It had always gone against the interests of the workers. Only the employers would go to the Labour Appellate Tribunal, for they believed that the Appellate Tribunal would give some relief. The basic question therefore was one of bringing forward a comprehensive Bill to abolish the L.A.T. and to provide some substitute arrangement rather than have piecemeal legislation like the one under discussion which did not touch upon the main problem.

Shri C. K. Nair (Congress) said that there was an urgent need for fixing a time limit for disposal of appeals by the L.A.T.

Shri K. P. Tripathi (Congress and I.N.T.U.C.) recalled that the I.N.T.U.C., Bombay, had passed a resolution, urging for the abolition of the Appellate Tribunal. The way in which the Appellate Tribunal had functioned had created bitter feelings. The L.A.T. had shown a complete lack of understanding of labour and industrial problems. When the Bill for its creation was moved in 1950 by Shri Jagjivan Ram, it was said that specially trained Benches of the L.A.T. would be constituted, but that assurance had not been fulfilled. Shri Tripathi referred to the discussions in the Joint Consultative Board wherein it was agreed that the L.A.T. should be abolished, and added that he could not understand why the Government had delayed the abolition of the L.A.T., when it was convinced that the L.A.T. should go. It was reported that the employers were trying to influence the Government not to abolish the Appellate Tribunal, although the Government itself thought that it should be abolished. By bringing forward the Bill under discussion, the Government was defeating its own policy to some extent. The working class of the country might thereby conclude that instead of abolishing the L.A.T., the Government had decided not to abolish it, and would like merely to tighten the procedure.

Shri Tripathi complained that the comprehensive law which had been drafted by the Labour Ministry with regard to the industrial relations was being held up, despite the promise made by the erstwhile Labour Minister. The working class felt that comprehensive industrial relations legislation had not been given sufficient priority and had been unduly delayed.

Dr. N. M. Jaisoorya (People's Democratic Front) said that the social changes that were taking place due to industrialisation required special understanding and, therefore, a new cadre of adjudicators should be trained to man the industrial tribunals. If the industrial tribunals were so manned, the Appellate Tribunal would be totally unnecessary.

Shri P.C. Bose (Congress) felt that the adjudication machinery had helped reduce industrial strife. Labourers had become law-minded and had given up the idea of committing violence. Shri Bose added that there had been a persistent complaint against the Appellate Tribunal both by the employers and by the workers

on the ground that it took a long time to decide any case that was referred to it—whatever its nature—, sometimes months and months, and sometimes years and years. The proposed arrangement under the Bill before the House, Shri Bose hoped, would make for speedy disposal of applications.

Shri Debeswar Sarmah (Congress) suggested that a directive should be issued to the Labour Appellate Tribunal that it should depute a Bench to each State to take up hearing of cases arising in that State, as it was extremely expensive for the office-bearers of small unions to go all the way to a distant place.

Shri T. B. Vittal Rao (People's Democratic Front) said that the Memorandum of the Ministry of Labour on Labour Policy for the Second Five Year Plan had clearly stated that the Labour Appellate Tribunal would be abolished. The Government had instead come forward with the new proposals which were good in themselves but could not cure the evil inherent in compulsory adjudication. If the Government was really serious to do some thing, it must abolish the Appellate Tribunal and not just tinker with the problem.

Shri Abid Ali explained that delays in disposal of appeals by the L.A.T. were due to the nature of the appellate work. One appeal had taken about  $4\frac{1}{2}$  months, for which two judges were sitting, and another special bench, having 3 judges, took about two months in another case. Ninety-nine per cent of the references to adjudication in the past had been made on the request of the workers' representatives. The larger number of appeals had, as far as he could recollect, also been filed by the unions.

#### *Discussion in the Rajya Sabha*

During discussion in the Rajya Sabha on 30th August, 1955, Shri S. N. Majumdar (Communist Party) wanted to know why the Bill did not include any provision for the abolition of the L.A.T. when all the sections of the labour movement had unanimously demanded it. The lawyers appearing before the L.A.T. in Bombay had some time ago decided to boycott it because of the unreasonable attitude of its Judges. The silence of the Labour Minister on the question of the L.A.T.'s abolition gave rise to the suspicion that Government had succumbed to the rising pressures of the employers against its abolition. Shri

Majumdar added that the L.A.T. had in the past mostly taken too legalistic a view of labour matters and failed to give adequate weight to considerations of social justice and the difficulties of labour. In many instances, particularly in cases where original tribunals had awarded bonus, the Appellate Tribunal had reversed their decisions. In the circumstances, the workers could not be expected to have any faith in the appellate machinery, whatever might have been the intention of those who had set it up. Furthermore, there had been inordinate delays in the giving of the awards. The adjudication of the dispute between the banks and their employees had taken seven years. The Labour Appellate Tribunal gave *ex parte* decisions inasmuch as the workers were required under Section 23 of the L.A.T. statute to submit their case in writing, and were not allowed to appear in person or through a counsel before the Tribunal.

Shri B. K. Mukerjee (Congress) pointed out that the working class was not getting a square deal from the L.A.T. due to the greater emphasis placed by the L.A.T. on legal points than on social justice. The employers were financially stronger and therefore in a better position to engage lawyers to argue their cases, and this factor, along with the emphasis by the L.A.T. on legal aspects, had seriously jeopardised the workers' chances of securing justice from it.

Shri H. P. Saksena (Congress), supporting the Bill, said that the Appellate Tribunal appeared to be an "unwanted baby", whom nobody would like to own. The labour leaders were swearing at it and the employers felt that it did not give them justice. He agreed with Shri Majumdar and Shri Mukerjee that the L.A.T. should be abolished.

Shri Abid Ali, refuting the fears expressed by the Members of Parliament belonging to the workers' organisations, pointed out that the Government had not yielded to any pressures; a decision had already been taken to abolish the Appellate Tribunal, and the proposed amending legislation would come before the House at an early date.

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The Industrial Disputes (Appellate Tribunal) Amendment Bill received the assent of the President on 12th September, 1955.

*Question in Parliament*

In reply to a Starred Question by Choudhary Raghbir Singh, the Deputy Minister of Labour, Shri Abid Ali, stated in the Lok Sabha on 1st March, 1956, that during 1955-56 six additional Benches of the L.A.T.—two each at Calcutta, Madras and Lucknow—had been constituted, increasing the total number to ten. On 31st January, 1956, 984 appeals and 1,977 applications were pending with the L.A.T. and 168 applications with industrial tribunals. Two *ad hoc* industrial tribunals, one each at Madras and Lucknow, had been constituted, for dealing with the applications. The Central Government's Standing Tribunal at Dhanbad had also been entrusted with the work of disposing of some of the applications.

Shri Abid Ali added that the disposal of appeals was speedier than in the past. Formerly there had been delay because the Government wanted only retired Judges of High Courts to be appointed to the L.A.T. However, as retired High Court Judges were not available, retired Sessions Judges had also been appointed to the L.A.T.

## IV. GOOD-BYE TO THE L.A.T.

### 1. THE DECISION TO ABOLISH THE L.A.T.

The Ministry of Labour had reviewed the entire question of the abolition of the Labour Appellate Tribunal early in 1955. The Ministry found that the workers' organisations were mostly unanimous in their demand for its abolition. Their principal objection was that the L.A.T. often took six to eight months to dispose of an appeal and sometimes even more, involving heavy expenditure and inconvenience which the workers could ill afford to bear due to lack of staying power. Some of the State Governments also favoured the abolition of the L.A.T. and the Planning Commission had in the First Five Year Plan opposed any provision for appeal from the judgements of the industrial tribunals or courts, barring decisions found to be perverse or against the principles of natural justice. The Ministry felt that it would be difficult to retain the Appellate Tribunal for the latter decisions only. Though relief might eventually accrue in small number of cases, the temptation to file an appeal under the idea of perversity would be there practically in every case. In any case, the Supreme Court was already available for such appeals by special leave. The Ministry further took note of the arguments for the retention of the L.A.T. put forward by the employers in the meeting of the Joint Consultative Board of Labour and Industry held on July 16-17, 1954. The employers had pointed out that L.A.T. was performing an essential function of co-ordinating the activities of the original tribunals; its decisions were serving as a guide to these tribunals on labour matters of fundamental importance to the economy of the country. The Ministry also noted that at the meeting of the Joint Consultative Board the employers had generally agreed to the abolition of the L.A.T., on the understanding that the original tribunals would be reconstituted on lines which would inspire the confidence of both the parties and ensure just and speedy decisions. The Ministry accordingly decided to recommend to the Government that the L.A.T. should be abolished and existing adjudication machinery should be substituted by a three-tier system of

tribunals as proposed by the Joint Consultative Board.

The draft Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, containing proposals for the abolition of the L.A.T. and the creation of three-tier adjudication machinery, was considered and approved by the Government of India towards the end of August 1955.

## 2. THE INDUSTRIAL DISPUTES (AMENDMENT AND MISCELLANEOUS PROVISIONS) BILL, 1955

The Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, 1955, was introduced in Lok Sabha on September 21, 1955. The main amendments proposed in the Bill were as follows:

- (1) The Industrial Disputes (Appellate Tribunal) Act, 1950, would be repealed and the existing system of industrial tribunals would be substituted by a three-tier system of original tribunals, consisting of (a) Labour Courts, (b) Industrial Tribunals, and (c) National Tribunals. Labour Courts would be appointed by the appropriate Governments, mainly for adjudication of industrial disputes concerning matters specified in the Second Schedule of the proposed Bill. The latter would include: propriety or legality of an order passed by an employer under the Standing Orders; application and interpretation of Standing Orders; withdrawal of any customary concession or privileges; discharge or dismissal of employees including reinstatement of, or grant of relief to, a person wrongfully dismissed, etc. Industrial Tribunals, to be appointed by the appropriate Governments, would have a wider jurisdiction than that of Labour Courts. In addition to matters specified in the Second Schedule, the Industrial Tribunals would have the power to decide matters specified in Schedule III to the Bill, e.g. wages, allowance, hours of work, leave, bonus, rationalisation, etc. The National Tribunals would be appointed by the Central Government, to deal with disputes involving questions of national importance or affecting establishments situated in more than one State.
- (2) In accordance with the agreement reached at the

meeting of the Joint Consultative Board of Industry and Labour on July 16-17, 1954, the existing provisions would be altered to provide that an employer who, during the pendency of proceedings, might find it necessary to proceed against any workman in regard to any matter unconnected with the dispute, he might do so in accordance with the Standing Order applicable to the workman. However, in cases of discharge or dismissal, the employer would have to pay the workman one month's wages and simultaneously file an application before the authority, before which the proceedings were pending, for the approval of the action taken.

- (3) As the existing definition of 'Workman' in the Industrial Disputes Act had led to uncertainty, particularly in the case of technical and supervisory personnel, it was proposed to enlarge this definition to cover supervisory personnel, whose emoluments did not exceed Rs. 500 per mensem and all technical personnel.
- (4) Provision would be made for voluntary reference of disputes to arbitration by the parties themselves by written agreement and for the enforcement of agreements between the employers and the workmen reached otherwise than in the course of conciliation.
- (5) The Bill also provided for certain essential amendments to the Industrial Employment (Standing Orders) Act, 1946. These included an amendment, entitling the workmen to submit an application for the modification of the existing standing orders.

### 3. PARLIAMENT DEBATES THE ABOLITION OF THE L.A.T.

#### *Discussions in the Lok Sabha*

Shri Khandubhai K. Desai, moving the Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, in the Lok Sabha on July 20th, 1956, conceded that the L.A.T. had tried to bring about uniformity and co-ordination in decisions of industrial tribunals. But against this merit of the case, said Shri Desai, there was the aspect of justice delayed. The Government felt that justice delayed would decidedly disturb and dislocate industrial production.

There was a general discussion in the Lok Sabha on the Bill on July 21st and 24th, and a detailed debate on its different clauses on July 24th. During the general discussion Shri V.V. Giri (Congress) stated that the consolidated Bill drafted by the Seven-Man Committee after the Nainital Conference could not be proceeded with due to differences of opinion between the different Ministries—honest and genuine differences. The new legislation brought up before the House for the creation of a three-tier machinery of adjudication was lesser of the evils. The new Bill also contained provisions concerning revision of Standing Orders, definition of the workman, and notice of change; these were some of the matters he had thought important enough for inclusion in a consolidated Bill when he was the Minister of Labour. The abolition of the Labour Appellate Tribunal was a good thing, and even the remaining adjudication machinery could be abolished provided the workers unitedly wanted it so. Shri Giri added "...so long as adjudication is there, conciliation machinery will not succeed. Workers were accustomed to it, as some of them were accustomed to opium and they cannot get over it. They would not rely on organised trade unions for supporting them when they are in trouble; they think they can go to the court and get all they want."

Dr. Lanka Sundaram (Independent) said that the Labour Appellate Tribunal had become really "obnoxious to the working man's improvement", and its abolition though delayed, should be welcome both to employers and workers.

Shri A.K. Gopalan (Communist Party) said that the Trade Disputes Act had actually weakened the unions, instead of strengthening them, with the result that the workers had been driven to the courts. The High Courts and the Supreme Court, Shri Gopalan pointed out, decided disputes only on the basis of the Constitutional and legal points and not on considerations of industrial peace and good labour relations.

Shri N. Srikantan Nair (Revolutionary Socialist Party and U.T.U.C.) complained that in their decisions tribunals and courts had failed to take into consideration the full implications of the concepts of the Welfare State and Socialist Pattern of Society, and both the L.A.T. and the Supreme Court had taken a narrow view in deciding upon the workers' claims for bonus under the Full Bench Formula. He explained (subsequently on July 24):

“...To bring in old people (as Judges) has been the bane of the appellate tribunals<sup>23</sup> also. The main agitation has been because they were old people who cannot understand the changing conceptions, who have been working in a certain rut, who can see the needs of the country only in a theoretical way or with the divine right of property in the back of their minds, who have been judges for a long time, who cannot dispense natural justice in such a way as to suit the conditions. I have seen in the old members of appellate tribunals,—you have to dance to their tunes; they are very senile and they accept whatever a lawyer says more than what a Member of Parliament says even if he, as a trade union leader, speaks from personal knowledge.”

Shri Nair added that once the principle of adjudication was accepted, it was necessary to have provision for appeal if adjudication was not to become a farce. Shri Nair reiterated the views of his organisation that the Labour Appellate Tribunal should not be abolished. Initially some of the decisions of the Labour Appellate Tribunal might go against the interests of the workers, but “after a few buffeting” the workers would become hardened and would realise how to organise themselves and fight back.

Shri G.L. Bansal (Congress and A.I.O.I.E.) said that the Labour Appellate Tribunal had been appointed to bring about uniformity in the conflicting and even diametrically opposed judgements of industrial tribunals and the situation had since improved. If the Appellate Tribunal was going to be abolished, at least one appeal should be provided from the Labour Court to the Industrial Tribunal and from the Industrial Tribunal to the National Tribunal.

Shri Bansal added that the appointment of sitting High Court Judges to the Industrial and National Tribunals would not only add to the prestige of the tribunals in the eyes of the workers and the employers but also there would be greater sense of Justice and fair play. It was often said that a retired High Court Judge “with superannuated looks” looked forward naturally to his continued employment and for that purpose his judicial outlook would somewhat be vitiated. Shri Bansal felt that if the sitting High Court Judges were appointed, the jurisdiction concerning

23. Shri Nair meant the different Benches of the L.A.T.

settlement of industrial disputes would automatically pass to the High Court and that would lead to a very healthy development. But if that were found impossible the entire judicial machinery should be handed over to either the Law Ministry or to some other Ministry so that the administrative Ministry which looked after labour relations did not come into picture time and again. He explained that this suggestion did not mean any aspersions on the *bona fides* of any Ministry, but was prompted by the desire to promote a feeling in the minds of the parties to the dispute that the adjudication would be conducted on an absolutely impartial basis.

Shri G.D. Somani (Independent, and also A.I.O.I.E.) stated that under the prevailing circumstances there was no justification for the abolition of the Labour Appellate Tribunal. If the reason for abolition was the delay in its decisions, the existing machinery could be strengthened to eliminate all possible delays. But it seemed that in the face of the overwhelming opinion of the workers' organisations in favour of the abolition of the Appellate Tribunal, the Government had already made up its mind to scrap it. All the same, the earlier understanding that if the Labour Appellate Tribunal were abolished the Industrial and National Tribunals would be suitably strengthened by manning them with High Court Judges was not being fulfilled by Government and it was doubtful whether the replacement of the existing arrangements by the proposed three-tier machinery would meet the needs of the situation.

Shri Bhagwat Jha 'Azad' (Congress) welcomed, with a sense of relief, the proposal for the abolition of the Appellate Tribunal, noting that cases used to lay pending with it for four to five years.

Shri T.B. Vittal Rao (People's Democratic Front) stated that it had taken about three years for the Labour Appellate Tribunal to decide the appeal of the employers against the award of the industrial tribunal in granting two national holidays with pay for the coal mine workers in the Bihar-Bengal coal belt.

Shri A.M. Thomas (Congress) observed that the question of abolition of L.A.T. had even formed the subject of selection campaigns by the various political parties. The Congress, the Socialists and the Communists—all of them—were agitating for its abolition. He did not think the main reason for agitation for the abolition of the L.A.T. was the costliness of the

appellate machinery, which was mentioned in the Statement of Objects and Reasons of the Bill. The main reason for the opposition of the workers' organisations to its retention was the general tendency of the different Benches of the Appellate Tribunal to maintain the *status quo*. Shri Thomas added that if the L.A.T. Judges erred at all, they erred only on the side of employers; and generally followed a very conservative policy.

Replying to the points raised in the general discussion, Shri Khandubhai K. Desai, Union Minister of Labour, justified, on July 24th, the abolition of the L.A.T. in the following words:

“...Anyway, I am not going to dilate on the issue whether an appeal is good or bad, but psychologically the Indian working class have taken very adversely to the appellate court. *It is not that justice is not being done, but the workers should believe that justice is being done to them as expeditiously as possible, and therefore the appellate court is going.*<sup>24</sup> When the appellate court is going, have got to see in the interests of everybody concerned that we replace it by courts which have dignity, which have a stature, which have got quality.”<sup>24</sup>

Referring to the success of the Industrial Disputes Act, 1947, Shri Desai pointed out that there had been less strikes and more amicable settlements, and the workers and employers had come together, forgetting their old ideas of conflict. The number of man-days lost by strikes, which was 16.5 million in 1947, had come down to 3.4 million, i.e. it was only one-fifth, in 1953. The percentage of cases referred to adjudication during the years 1954 and 1955 by the Central Government at the request of the central trade union organisations was as follows: I.N.T.U.C., 47.4%; A.I.T.U.C., 49.4%; and H.M.S., 55%.

Explaining his approach and policy to industrial relations, Shri Desai said:

“My esteemed predecessor, Shri Giri is very keen that we make the experiment of doing away with this whole law practically and end entirely going in for what is called 'collective bargaining'. I am one of those trained up in that procedure. Ninety-nine per cent of my whole life has been spent in collective agreements and agitations

24. Italics by the author.

and I always feel that voluntary agreement or referring the question voluntarily to arbitration is the best solution. I have no doubt in my mind about that; and, therefore, we have provided in this Bill that voluntary arbitration or agreement should be given legal sanction. We must realise at the present time that the whole notion of complete *laissez faire* is out of date. The society or the community cannot allow the workers or the management to follow the law of the jungle. The society has to step in, because the community at large is also interested in questions which may affect, to begin with, a section. Therefore, as a last resort, the Government takes the power to refer these disputes to adjudication. It is true that old habits die hard. Traditional way of thinking is on either side; but, it is based more or less on class conflict. I feel that communal and class hatred must be replaced by mutual understanding and a psychological approach to the problem, thinking at the same time that both the employees and the management are doing their work in the interest of the community itself."

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During consideration, in the Lok Sabha on 24th July, 1956, of the provisions in the Bill in regard to the composition of the Labour Courts and Industrial and National Tribunals, certain amendments were proposed to the provisions concerning the qualifications of persons eligible for appointment as presiding officers. The Bill as introduced in the House provided:

- (i) The presiding officer of the Labour Court would be a person with at least seven years of judicial experience.
- (ii). The Industrial Tribunal would be presided over by a sitting or a retired High Court Judge or a person who had been member of an industrial tribunal for at least two years.
- (iii) As regards the National Tribunal, a sitting or a retired High Court Judge would be eligible to be appointed to preside over it.

Shri Desai, Minister of Labour, proposed official amendments to provide, in addition, for the following:

- (1) A person who had been presiding officer of a Labour Court for five years would also be eligible for appointment as presiding officer of the Labour Court under the new law.
- (2) A person who had been Chairman, or a member, of the L.A.T., for a period not less than two years could also be appointed as the presiding officer of the Industrial and National Tribunals.

Six Members of Parliament moved amendments to the above provisions. These mostly aimed at reduction of the qualifying period of experience as a presiding officer of the Labour Court or as a member of any tribunal, for being eligible for appointment to the Labour Court and Industrial Tribunal respectively. It was suggested that a person qualified to be a High Court Judge or possessing 10 years' experience as a District Judge might be eligible for appointment to an Industrial or National Tribunal. It was argued that it would not only be expensive to engage High Court Judges but also difficult to secure their services.

All the non-official amendments were rejected by the House.

#### *Debate in the Rajya Sabha*

Shri Abid Ali, Deputy Labour Minister, moving the Bill in the Rajya Sabha on 9th August, 1956, observed that the Labour Appellate Tribunal had been originally set up to ensure a certain degree of co-ordination in the awards of the various tribunals and to build up a more or less authoritative body of well-founded principles and opinions on industrial law and practice which would serve as a guide to the original tribunals. While this objective had been realised to some extent, certain defects of a fundamental nature had developed in the appellate machinery. One of these was the delay in obtaining decisions in appeals, which was a matter of vital importance to the workers. Appeals from one party or the other on the decisions of the original tribunal had become more or less the rule. Considering that the decisions of the tribunals were ordinarily valid only for a period of one year, the time taken to arrive at them was disproportionately long. The workers were almost unanimous in their demand for the abolition of the L.A.T., and the Government felt that the demand was justified. The Government had accordingly decided to abolish the Appellate Tribunal and to introduce a three-tier

system of one-man original tribunals, with no provision for appeal against their decisions.

Shri Abid Ali added that adjudication, unlike negotiation and conciliation, invariably produced an adverse psychological reaction in the parties; it always left behind an amount of bitterness which tended to prejudice the maintenance of cordial relations between the employers and the workers. Where mutual negotiations could not bring about a settlement, Government would prefer that the parties themselves agree to voluntary arbitration. The new Bill sought to make bipartite settlements legally binding on the parties, like settlements reached in conciliation, and also provided for the machinery necessary for voluntary arbitration, on a written agreement between the parties.

Shri Abid Ali concluded that while settlement of disputes by mutual negotiations between parties with or without the assistance of Government Conciliation Officers, or by arbitration, was to be welcomed and encouraged, Government could not afford to discard altogether the method of adjudication by tribunals. For the success of the Second Five Year Plan, it was vital to maintain industrial peace and it was, therefore, essential for Government to have the right to intervene when production or the fulfilment of the Plan targets was likely to be threatened.

Shri Lalchand Hirachand Doshi (Congress) felt that the answer to delay in decisions concerning settlement of industrial disputes lay in providing adequate number of courts and judges. One-man Courts with no provision for appeal would not be effective in dispensing justice and there would be no co-ordination between the decisions of the adjudicating authorities.

Shri K.S. Hedge (Congress) said that the L.A.T. had been an institution for "dilatoriness" and had always created prolonged litigation between labour and capital. Some time it had taken the L.A.T. more than one or two years to give its decision; its emphasis was more on enunciating industrial law than deciding disputes between the workers and the employers justly and correctly.

Shri C.P. Parikh (Congress) thought that the Labour Appellate Tribunal had been mostly concerned with interpreting labour statutes and the principles followed by other Courts. He felt that the real justification for the abolition of the Labour Appellate Tribunal was that the workers thought that it was

giving them "much less than what was due". The Tribunal had taken certain decisions unpalatable to the unions and the latter had therefore urged the Labour Minister to abolish it. Shri Parikh felt that the decision to abolish the L.A.T. was a wise one, considering that it was better to have full production rather than have production lost by strikes and go-slow tactics on the part of the workers due to their dissatisfaction with the appellate machinery.

Shri Abid Ali, referring to the complaint made by Shri Doshi that delays were due to the inadequate strength of Judges, pointed out that the very existence of the Labour Appellate Tribunal was a factor responsible for delays. The filing of an appeal within the permissible period of one month after the judgement, the study of the award by the L.A.T.'s office, issue of notice, hearing of arguments, etc., all these easily took six months—a period too long, considering that the award was binding for one year only.

Shri Ratanlal K. Malviya (Congress) urged that the Appellate Tribunal should be continued for some time more. He pointed out that without the L.A.T., the condition of three and a half lakh of workers in the coal industry would have been very bad.

\* \* \*

The Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, as passed by Parliament, received the assent of the President on 28th August 1956. The Industrial Disputes (Appellate Tribunal) Act, 1950, was repealed from 1st September 1956, but the appeals pending before the L.A.T. on that date were to be disposed of by it as if the said Act had not been repealed. The number of appeals pending before the L.A.T. on 31st August, 1956, was 439; and of applications, 823. The L.A.T. became *functus officio* on 31st May, 1959, after the disposal of cases pending before it.

#### 4. THE WORKERS' ORGANISATIONS FEEL RELIEVED

Acclaiming the abolition of the L.A.T., *The Indian Worker*, in an editorial note, dated 27th August, 1956, said, "With the abolition of the Labour Appellate Tribunal, which had been

long demanded by the I.N.T.U.C., one potent cause of delays in the final settlement of disputes has been eliminated."

About the abolition of the L.A.T., Shri S.A. Dange, General Secretary, A.I.T.U.C., in his General Report to the Twenty-Fifth Session of the A.I.T.U.C. (December 25-29, 1957), said:

"The L.A.T. did lift bonus from an *ex gratia* payment to a right under certain conditions. It was declared to be deferred wage but only until a living wage was attained. The L.A.T., however, worked out a formula for the disposal of the surplus product in such a way that it enabled the employers to appropriate a major part of the surplus before any thing could be left for bonus. But it allowed the consideration of social justice, obviously meaning thereby the bad condition of the worker and the need to improve it, to be made an element in the final judgement. Soon, however, on an appeal from the employers, the Supreme Court blew up the conception of social justice from consideration of bonus payment.<sup>25</sup> "The L.A.T. formula was heavily weighed in favour of the employers. Every section of the trade union movement protested against it, including the I.N.T.U.C. The L.A.T. verdicts, their delays and costliness incensed the workers and ultimately on a demand from all sections of trade unions, including the I.N.T.U.C., the L.A.T. was abolished without accomplishing any standard system or norms of wages or bonus for the whole country."



**DECISION THREE:**  
**THE DECISION "NOT TO REVIVE"**

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## 1. INDUSTRIAL RELATIONS DURING 1957-61

DURING THE YEARS 1957-61, the general position regarding factory employment and earnings was as shown below:

Year	Average Daily Factory Employment (in millions) <sup>1</sup>	Annual Earnings		
		Annual Average Money Earnings (in rupees)	Index of Money Earnings (base: 1951) <sup>2</sup>	Index of Real Earnings (base: 1951)
1957	3.54	1234	120.8	114.3
1958	3.59	1285	118.8	107.5
1959	3.64	1310	121.7	105.6
1960	3.77	1386	130.1 (P)	110.2 (P)
1961	3.92	1413	137.5 (P)	114.6 (P)

Employment in mines, plantations and shops and commercial establishments increased from .63, 1.20 and 1.53 million respectively in 1956 to .65, 1.34 and 1.58 million in 1957. In 1959, the corresponding figures were .62, 1.27 and 1.63 million.

The growth of registered trade unions, the number of disputes and man-days lost and the percentage distribution of disputes by causes during the period 1957-61 was as follows:

*Growth of Trade Unions  
(1957-60)*

Year	Registered Trade Unions		Unions Submitting Returns	
	Number	Index (base: 1951-52)	Number	Membership (in million)
1957-58	10,045	217.3	5,520	3.01
1958-59	10,228	221.2	6,040	3.65
1959-60	10,811	233.9	6,588	3.92
1960-61 (P)	11,175	241.7	6,829	3.78

(P) Provisional figures.

1. For factories covered by the Factories Act, 1948; the figures include rough estimates for the factories which did not submit any returns.
2. The indices for 1958 to 1961 do not include figures for certain States, which were not available. After inclusion of the estimated figures for these States, the indices of money earnings for 1958, 1959, 1960 and 1961 come to 122.3, 126.4, 134.4 and 137.4 respectively.

*Industrial Disputes*  
(1957-61)

Year	<i>Industrial Disputes<sup>3</sup></i>		<i>Manufacturing Sector Only</i>		
	<i>Number of Disputes</i>	<i>Number of Man-days Lost (in millions)</i>	<i>Frequency Rate<sup>4</sup></i>	<i>Severity Rate</i>	<i>Index of Industrial Unrest (base: 1951)</i>
1957	1630	6.42	0.097	400	94
1958	1524	7.97	0.088	414	97
1959	1531	5.63	0.086	421	99
1960	1583	6.53	0.093	533	126
1961	1357	4.91	0.077	345	81

In 1957 and 1958, a large number of units in textile, jute, tea and engineering industries stopped working their second and third shifts, and in several cases the entire undertakings closed down, due to financial and organisational difficulties, shortage of imported raw materials, foreign exchange and import restrictions. There was a country-wide strike in September and October 1957 in the banks over the demand of compensatory allowance. There were wide-spread work stoppages in the cashew factories of Kerala in August and September 1957 over the demand of bonus. The major strikes in 1958 were the strike in TISCO, Jamshedpur, in May; in Ports and Docks (except Cochin) in June; in Premier Automobiles in April-July; a general strike in Bombay in July; and in Calcutta Tramways in September.

A development of far-reaching significance in 1958 was the adoption of a voluntary Code of Discipline at the (tripartite) Indian Labour Conference held in May 1958. The Code of Discipline was ratified by the four central organisations of workers and the three all-India associations of employers recognised by the Government for representation at national and international tripartite conferences.

During 1959-60, there were no important strikes.

3. The average of statistics changed radically in 1957 due to Re-organisation of States.
4. Frequency rate is the ratio of number of industrial disputes to .1 million of man-days scheduled to work; and severity rate is the ratio of total man-days lost to .1 million man-days scheduled to work.

The situation arising out of closures of industrial establishments was comparatively less serious during 1960 than in 1958 and 1959. The textile industry particularly showed an increase in its working strength as some of the units which had closed down in 1959 resumed work in 1960. Engineering industries, which were affected because of inadequate maintenance imports in 1958, showed an improvement.

Another important event during 1960 was a general strike on midnight of July 11 by the Central Government employees. To meet the threat of the strike the Government of India promulgated on July 8 the Essential Services Maintenance Ordinance, 1960. The strike was partial and was called off after 5 days. The main demands of the employees related to a national minimum wage of Rs. 125, calculated on the basis of the 'norms' recommended by the Indian Labour Conference at its Fifteenth Session, as against the minimum wage of Rs. 80 p.m. proposed by the (second) Central Pay Commission in its report which had been accepted by the Government, and to the question of linking of dearness allowance to the cost of living index.

In 1961, the situation was somewhat disturbing in the case of jute textiles, as some units had to close temporarily owing to non-availability of raw jute. Some industrial units, mainly cotton textiles in Madhya Pradesh and Maharashtra, were also threatened with closure for short periods because of non-availability of coal. However, in the cotton textile industry as a whole, the situation created by closures continued to show steady improvement after 1958.

The percentage distribution of disputes, by causes, during 1957-61 was as follows:

*Causes of Disputes*

Year	Wages and Allowances	Bonus	Personnel and Retrenchment	Others	Total Cases <sup>5</sup>
1957	29.6	13.6	30.9	25.9	1,556
1958	30.5	11.5	33.0	25.0	1,514
1959	27.1	10.3	29.1	33.5	1,492
1960	37.1	10.5	24.7	27.7	1,506
1961	30.4	6.9	29.3	33.4	1,314

5. Only those cases for which the relevant information was available to the Labour Bureau are included.

The number of adjudications under the Industrial Disputes Act was 2,962, 2,952 and 2,897 in 1959, 1960 and 1961 respectively. The total number of agreements and awards in 1958-60, for which information was collected by the Labour Bureau of the Union Ministry of Labour and Employment, was as follows:

<i>Half year ended</i>	<i>Total number of awards and agreements</i>	<i>Awards and agreements relating to bonus</i>	<i>Awards and agreements relating to wages or dearness allowance or both, which also included the question of bonus</i>
31st December, 1958	279	137	17
30th June, 1959	325	146	28
31st December, 1959	214	80	22
30 June, 1960	488 (agreements 370; awards 118)	218 (agreements 179; awards 39)	55 (agreements 42; awards 13)
31st December, 1960	206 (agreements 122; awards 84)	87 (agreements 60; awards 27)	10 (agreements 5; awards 5)

The number of agreements between the employers and workers of different industrial undertakings increased considerably during 1957-61. In 1960, 492 such agreements were concluded. Some of the agreements provided for a minimum bonus irrespective of loss or inadequate profits; some set a maximum ceiling also; and a few linked the rate of bonus with the managing agency commission or return on capital.

In case of the textile mills in Ahmedabad, the dispute for bonus for 1958 was adjudicated by the Industrial Court which extended the Five Year Bonus Agreement for 1953-57 to 1958. The Supreme Court, in appeal, ruled that the Court could not extend, against the will of any of the parties, an agreement which provided for "set off" and "set on" of bonus against the L.A.T. Full Bench Formula, and it sent back the case to the Industrial Court for disposing of the issue in accordance with the

law. An agreement for bonus for four years 1959 to 1961 was concluded in October 1961 between the T.L.A. and the Ahmedabad Millowners' Association, providing for bonus at an *ad hoc* rate—yearly average of the total bonus for distribution for the five years 1953-57 (in terms of Five Year Agreement of June 1955), linked to changes over 7½% in the average strength of employees in 1953-57.

In Bombay, the bonus dispute in the textile industry for 1959, 1960 and 1961 was settled by the mediation of Shri Y.B. Chavan, Chief Minister, Bombay State, who awarded a total bonus of Rs. 10.75 crores, as against Rs. 13.5 crores demanded by the workers and Rs. 7.5 crores proposed by the employers.

\* \* \*

In pursuance of the recommendations of the Second Five Year Plan, in November 1956, the Government of India appointed a Study Group on Workers' Participation in Management. The report of the Study Group was considered by the Indian Labour Conference at its Fifteenth Session held in July 1957. The Conference favoured voluntary action and set up a tripartite sub-committee which prepared a detailed scheme to be tried in the first instance in selected large units. A Seminar on Labour Management Co-operation was held in January-February 1958; (another seminar met in March 1960). It was subsequently decided that joint councils should be set up on a voluntary basis, to begin with, in about 50 undertakings both in the public and the private sector. The I.N.T.U.C., believing in the Gandhian philosophy that labour is a co-partner in industry, welcomed the scheme whole-heartedly. But the reaction of the H.M.S. was rather restrained; it attached greater importance to joint machinery for redress of grievances. Though the initial efforts to start joint management councils in 50 undertakings did not meet with sufficient response, joint management councils were functioning in 53 units in 1962-63—16 in the public sector and 37 in private industry, as against 11 and 18 respectively in 1961-62.

The Ministry of Labour and Employment invited a Ford Foundation Team of Experts on Workers' Education in January 1957; the recommendations were considered at a Seminar on the subject held in New Delhi in March 1957. The trade union

movement, as a whole, welcomed the scheme. The Indian Labour Conference, at its Fifteenth Session (July 1957), approved, with some modifications, the scheme of workers' education as recommended by the Seminar, including the suggestion for the appointment of semi-autonomous Central Board for Workers' Education, consisting of representatives of the employers, workers, Government and educational institutions to administer it. The Board was set up in September 1958. The first phase of the Workers' Education Programme—the training of teacher-administrators—commenced in May 1958. The Workers' Education Programme thereafter made steady progress. The Central Board for Workers' Education had, by the end of February 1962, set up 13 regional workers' education centres (3 of which were residential), and organised 3 teacher-administrators' courses in which about 135 teacher-administrators received instruction. The number of worker-teachers and workers trained was 1,781 and 22,735 respectively; and another 230 worker-teachers and 9,441 workers were under training.

A tripartite Wage Board for Cotton Textile was set up in March 1957. The question of Wage Boards was discussed in detail at the Fifteenth Session (New Delhi, July 1957) of the Indian Labour Conference which recommended that the appropriate machinery for wage fixation should be tripartite Wage Boards. The Conference also adopted certain 'norms' for 'need-based' minimum national wage for the guidance of all wage fixing authorities, e.g. wage boards, adjudicators, minimum wage committees. Wage Boards were set up for Sugar Industry (December 1957), Cement (April 1958), Jute (April 1960), Tea Plantation (December 1960) and Rubber and Coffee Plantations (July 1961).<sup>6</sup> The Wage Boards on Cement, Cotton Textiles and Sugar submitted their report in October 1959, December 1955 and November 1960 respectively. Their recommendations were unanimous and were mostly accepted by the employers. Interim relief was recommended by other Wage Boards, pending their final reports. The percentage of workers benefited by the implementation of the recommendations of the Wage Boards in Cement, Textiles and Sugar was 100, 96.2 and 99.27 respectively at the end of March 1962. The institution of Wage Boards

6. Wage Boards have since been set up for Iron and Steel (January 1962) and Coal Mining (August 1962).

has been welcomed both by the employers' and the workers' organisations and it has significantly reduced the arena of disputes going to adjudication.

## 2. DELAYS IN APPEALS AFTER THE ABOLITION OF THE L.A.T.

The workers' organisations had, as the earlier narrative has indicated, opposed the L.A.T. from the very beginning on the ground that it would lead to delays, and they succeeded in getting it scrapped after six years' persistent efforts. But their high expectations that the abolition of the L.A.T. would reduce delays in the final settlement of disputes through adjudication were soon belied. There was a large increase in the number of appeals to the High Courts and the Supreme Court after the abolition of the L.A.T. The number of petitions for special leave to appeal in labour matters made to the Supreme Court increased from 57 in 1955 to 291 in 1956, and 189 in 1957 (first 10 months only); and the number of petitions granted by the Supreme Court rose from 37 to 257 and 148 respectively. A subsequent study by the Implementation and Evaluation Division of the Ministry of Labour and Employment<sup>7</sup> indicated that out of the 33 judgements delivered by the Supreme Court in 1957 and 1958, appeals had been initiated by the employers in 25 (76%) cases, by the workers in 5 (15%) cases, and by the State Government in 3 (9%) cases. Questions of termination of service and wages accounted for 84.8% (28 cases) and the issue of bonus for 21.2% (7 cases) of the total number of appeals. The employers were wholly successful in about 72 per cent cases; and the workers in 40 per cent. The study also indicated that in most of the cases, questions of law and principles were involved; in majority of cases important decisions laying down broad principles were given by the Supreme Court. The monetary benefit was comparatively small in majority of cases.

The I.N.T.U.C. Working Committee, at its Forty-Fourth Session held on July 14-15, 1957, deplored the attempt on the part of a section of the employers to convert the High Courts and the Supreme Court into another Labour Appellate Tribunal by

7. The Union Ministry of Labour was re-named as Ministry of Labour & Employment on 17th August, 1957.

their preferring appeals to them indiscriminately. It pointed out that the main objective of the abolition of the L.A.T. had been the elimination of delay in settlement of disputes through adjudication. It had since become obvious that the objective could not be achieved so long as resort to the High Courts and the Supreme Court was open. The Committee added: "Generally an appeal either to the Supreme Court or the High Court involves much more delay and costs than an appeal to the Labour Appellate Tribunal. It is this delay in the settlement of industrial disputes by adjudication or otherwise that invariably has led to stoppage of production and dislocation in industry, and if the Second Five Year Plan is to succeed, it is imperative that industrial disputes should be settled with the least delay, and courts of justice should not be allowed to become instruments of delay." "...The main object...of having a three-tier system, each as the final authority in respect of matters under its jurisdiction, can be achieved only if there is no reference to the Supreme Court and the High Courts, and such references are barred by necessary amendment to the Constitution."

### 3. THE QUESTION OF STAFFING INDUSTRIAL TRIBUNALS

The reader may like to recall that the employers had, at the meeting of the Joint Consultative Board of Industry & Labour held in July 1954, agreed to the abolition of the L.A.T. on the understanding that the presiding officers of the Industrial and National Tribunals would be sitting Judges of the High Courts. The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, by which the L.A.T. was abolished and provision was made for the creation of the three-tier adjudication machinery, provided that the presiding officers of the Industrial and National Tribunals could be sitting or retired High Court Judges, or persons who had been members of the L.A.T. for two years. The Act of 1956 also provided that a person who had been a member of an Industrial Tribunal for two years (prior to the enactment of the Act) could be appointed as the presiding officer of an Industrial Tribunal in the new three-tier adjudication machinery.

The question of staffing of the Industrial Tribunals by

judicial personnel of adequate status and qualifications so as to inspire the confidence of the employers' and the workers' organisations continued to attract the attention of the Government and the Tripartite Labour Consultative Machinery quite for some years after the abolition of the L.A.T. Proposals for the revival of the L.A.T. were actively considered during 1959, 1960 and 1961 due to an increase in the number of appeals to the High Courts and the Supreme Court in 1956 and 1957 and the consequent protracted delays in disposal of these appeals. This increase was attributed by the employers and the workers to the staffing of Industrial Tribunals by judges of not adequate calibre and status.

The Labour Ministers' Conference held from May 15th to 19th, 1958, noted that the State Governments were finding it difficult to secure the services of High Court Judges, sitting or retired, for manning the Industrial Tribunals. There was a general agreement that the Industrial Disputes Act might be amended to provide for the appointment of serving or retired District Judges as presiding officers of Industrial Tribunals. The Conference<sup>8</sup> urged that such appointments should, however, be made in consultation with the High Court.

The Government of India placed before the Sixteenth Session of the Indian Labour Conference, held at Nainital on May 19-20, 1958, certain proposals to amend the Industrial Disputes Act to enable the State Governments to appoint serving or retired District Judges as presiding officers of Industrial Tribunals. The employers' representatives, having regard to the

8. The Labour Ministers also discussed the question of suspension of adjudication. The Chairman, Shri G.L. Nanda, Union Minister of Labour, summing up the discussions observed that the consensus of opinion was that the time was not yet ripe for the suspension of adjudication. However, every endeavour should be made to reduce to the minimum the occasions of governmental interference for purposes of reference of disputes to adjudication. This object could be achieved in several ways, e.g., by facilitating internal settlements at bipartite and tripartite levels and by establishing norms for various purposes.

Shri G.L. Nanda had assumed the office of the Minister of Labour in April 1957 on the re-constitution of Government after the Second General Election. He also continued to hold the portfolio of Planning which had been with him since September 1951. Shri Nanda was the Leader of the Indian Delegation to the International Labour Conference, Geneva, June-July, 1959; and has been Deputy Chairman, Planning Commission, from July 1960 to date.

difficulties in securing the services of serving or retired High Court Judges, agreed to these proposals on the understanding that the whole position would be reviewed after a period of two years.<sup>9</sup>

The Indian Labour Conference, at its Sixteenth Session, adopted a voluntary Code of Discipline, which was ratified by the all-India employers' and workers' organisations and came into force on June 1, 1958. The Code defined the rights and obligations of the different parties.<sup>10</sup> Under the Code, management

9. Several Governments thereafter amended the Industrial Disputes Act to provide that the presiding officers of the Industrial Tribunals could be sitting or retired District Court Judges. These included: Kerala (1961), Assam, Gujarat and Maharashtra (1962), and Mysore (1963).

The Indian Labour Conference also felt that the time was not appropriate for the suspension of adjudication though it should be the last resort in the process of settlement of disputes.

The Memorandum of the Ministry of Labour and Employment on this question had stated:

“In the conditions existing in this country, it would be a grave risk for Government to divest themselves of the authority to step in with adjudication, when all other methods at settlement have failed. There has been no demand from workers for any change in this respect. As a matter of fact during the years 1954, 1955 and 1956, adjudications have been ordered by Government mostly on the request of the workers themselves...

“...the mere abolition of the Appellate Tribunal and the introduction of the three-tier system of original tribunals cannot contribute to speedy settlement of disputes and cannot vouchsafe social justice to the workers so long as parties resort to Law Courts in labour matters through writs and special leave to appeal and the Courts themselves have to follow their normal methods of procedure which are costly and time-consuming. Under the Constitution it is not possible to take away the fundamental right of persons to approach judicial authorities. The real remedy lies in both parties adhering to the spirit of the Code of Discipline and not resorting lightly to litigation.”

10. The Standing Labour Committee, at its Sixteenth Session (October 1957) and the Indian Labour Conference at its Seventeenth Session (July 1959) approved of certain sanctions to be applied voluntarily by the employers' and workers' organisations against their members for violating the Code of Discipline. A *tripartite* Central Implementation and Evaluation Committee was set up in June 1958 to look into complaints concerning non-implementation of the two Codes, awards of tribunals, labour laws, etc. Similar *tripartite* Committees were established in States. A Central Evaluation and Implementation Division was created in the Union Ministry of Labour and Employment in the middle of

and unions jointly agreed that no unilateral action would be taken in connection with any matter concerning industrial relations and the disputes would be settled at appropriate levels by mutual negotiation, conciliation and voluntary arbitration; that the existing machinery for settlement of disputes would be utilized with the utmost expedition; that there would be no strike or lock-out without notice; that the parties would establish, upon a mutually agreed basis, a grievance procedure (based on the guiding principles approved by the Indian Labour Conference); that unions which observed the Code and which fulfilled the criteria for recognition, approved by the Indian Labour Conference at its Sixteenth Session, would be recognised by their employers; that both the employers and the workers would not indulge in unfair labour practices; and that they would take appropriate action for the observance of the Code.

#### 4. THE LAW COMMISSION RECOMMENDS PROVISION FOR APPEAL

The question of the establishment of some form of appellate machinery was revived by the recommendations made by the Law Commission of India,<sup>11</sup> in its Fourteenth Report (Reform of Judicial Administration—Volume I), submitted to the Government of India on 26th September, 1958. The Law Commission pointed out that the number of appeals in labour matters, by special leave under Article 136 of the Constitution,<sup>12</sup> against the decisions of the various labour tribunals had been progressively on the increase.

1958 and Implementation Units were set up in State Labour Departments.

11. The Law Commission was appointed on 5th August, 1955, with Shri M.C. Setalvad as its Chairman, to review the system of judicial administration in all its aspects and suggest ways and means of improving it and making it speedy and less expensive; and to examine the Central Acts of general application and importance and recommend the lines on which they should be amended, revised, consolidated or otherwise brought up-to-date.
12. Under Article 136, the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter, passed or made by any court or tribunal in the territory of India (except in the case of the Armed Forces).

*Statement Regarding Petitions for Special Leave to Appeal  
in Labour Matters, 1950-57*

(As on 31st October, 1957)

Year	Registered	Granted	Dismissed
1950	19	18	1
1951	20	11	9
1952	9	3	6
1953	59	23	36
1954	51	21	30
1955	57	37	20
1956	291	257	32
1957 (up to 31st October)	189	148	16

The Law Commission found that the situation created by the large number of appeals admitted in labour matters was causing concern in two respects. It had the natural effect of clogging the work of the Supreme Court. Notwithstanding the increase in its strength, the disposal by the Court was "not equal to the rising institutions" with which it was faced. The graver aspect, however, of the matter was that labour matters were being thrust upon a Court which did not have the means or materials for adequately informing itself about the different aspects of the questions which would arise in these appeals and therefore found it difficult to do adequate justice to them. In many of these cases, the Supreme Court had not even the assistance of a properly written judgement such as it would have in appeals from the High Courts. Equally grave were the delays caused by these appeals in the disposal of industrial matters which essentially needed speedy disposal.

The Report added that though the Supreme Court had made repeated efforts to deal with these matters expeditiously, there was naturally a large number of pending appeals in labour matters. These matters had in a sense been forced upon the Court inasmuch as the Court could not refuse to entertain appeals against decisions which appeared to be arbitrary and capricious and made in disregard of well accepted principles of law or natural justice. It was noticed that the large number of applications for special leave on labour matters made to the Supreme Court had synchronised with the abolition of the Labour Appellate Tribunal.

There was no provision for appeal against the decisions of tribunals constituted under the three-tier adjudication machinery set up after the abolition of the L.A.T. Not unnaturally, therefore, in most cases of unjust or arbitrary decisions there had been applications for special leave to the Supreme Court. The aggrieved party approached the Supreme Court because the jurisdiction of the High Court under Article 226 was too narrow to afford it relief in the matter. Under Article 226, the High Courts would, generally speaking, quash these orders only in cases of excess of jurisdiction or an error of law apparent on the face of the record or a contravention of the principles of natural justice or the like.

The Law Commission concluded that it was, therefore, imperative that the legislature should intervene and provide for an adequate right of appeal in these matters by constituting tribunals of appeal under the labour legislation itself or by conferring a right of appeal to the High Court in suitable cases. The Commission emphasised that even if the right of appeal to the High Courts or any other tribunal was provided, the jurisdiction of the Supreme Court under Article 226 must continue unrestricted.

##### 5. THE EMPLOYERS POSE THE QUESTION OF "REVIVAL"

In a communication on the question of the setting up by the employers of machinery for screening of cases<sup>18</sup> going to law courts, addressed to the Government of India, on 15th October, 1958, the All-India Organisation of Industrial Employers said that industrial disputes were being referred to the High Courts and the Supreme Court because adjudication machinery was weak; that adjudication machinery should form part of regular

13. To minimise litigation, the Central Implementation and Evaluation Committee in September 1958, and the Standing Labour Committee in October 1958, decided that workers' and employers' organisations should evolve, as far as possible, machinery to screen cases wherein recourse to law courts was contemplated. The central employers' and workers' organisations accordingly set up a separate Committee or made arrangements through their central, State or regional offices to screen cases of industrial disputes before appeals were filed in higher courts by their members.

judiciary; and, finally, "the question of restoring the Appellate Tribunal should also be considered."

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During discussions at the Sixteenth Session of the Standing Labour Committee held on October 18-19, 1958, Shri N. H. Tata (E.F.I.) stressed the need for an appellate tribunal in view of the widely varying, and sometimes conflicting, decisions of the different tribunals in the various States, which had resulted in the large number of references to the Supreme Court. Further, the judges of the tribunals had generally very little background of the issues they were dealing with. That was why the employers had often pointed out that an appellate tribunal was necessary. After its abolition, the number of appeals to the Supreme Court had inevitably increased.<sup>14</sup>

Shri Lakshmpat Singhania (A.I.O.I.E.) suggested that the Industrial Tribunals should consist only of persons not less in rank than that of a District or a High Court Judge. He was opposed to the employment of retired Judges, who took an unduly long time to give awards. In one such case, negotiations had dragged on for eight years without any result.

Shri Bagaram Tulpule (H.M.S.) regretted that in spite of the emphasis on mutual negotiations and arbitration as in the Code, the employers had not shown any evidence of greater readiness on their part to enter into mutual negotiations with the workers or to submit disputes to arbitration.

Shri G. Ramanujam (I.N.T.U.C.) was of the opinion that the

14. Shri Tata added that if an analysis were made of the adjudications, it would very likely be found that most of them related to wages, dearness allowance, bonus and retrenchment. If one were to go deeper, one would find that they mostly arose out of a basic economic imbalance. Unless there was a proper understanding of the economic situation such disputes would continue to occur and the Code of Discipline alone could not meet the situation. The Code had been framed more in the nature of self-censorship. It was no use blaming only the employers for its breaches. The trade unions too could not escape responsibility for its limited success. It was no use touching merely the surface of the problem and saying that the adjudication machinery was inadequate. Things would not be improved only by the Labour Ministry telling the employers and the employees to do this or that. What was needed was a probe into the economic conditions of the country.

composition of the existing tribunals was not so bad as was sought to be made out. To ensure that the tribunals had some background, special Labour Benches might be created in the High Courts and the Supreme Court on the lines of the Civil and Criminal Benches. There should also be a cadre of Judges specialised in labour and industrial matters. Shri S.P. Dave (I.N.T.U.C.) remarked that the status of a person before his appointment to a tribunal was not so much material as his ideas and ideals of social justice. It was common knowledge that the Judges were guided by case law and legal texts and could not give up such an attitude even after appointment to the tribunals. The decisions of the tribunals should be based primarily upon unwritten agreements reached at tripartite conferences; their task was to promote social justice, and not administering of law. Further, the manner in which labour disputes were being handled by the judiciary was such as to tempt even the employer with good intentions to refuse to give the workers their due.

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The All-India Organisation of Industrial Employers and the Employers' Federation of India, in a joint memorandum concerning amendments to the Industrial Disputes Act, 1947, addressed on 28th November, 1948, to the Government of India, pointed out that there was considerable scope for improvement of the existing system of selection of Judges for the Labour Courts and Industrial Tribunals, under which the personnel of judicial services could get extension of service on reaching super-annuation age. The Labour Courts and Industrial Tribunals should function as part of judicial services under the control of the High Courts and the qualifications of their members should be such as to create confidence in the parties.

#### 6. THE ALTERNATIVES TO REVIVAL

##### *Indian Labour Conference (July 1959)*

The Law Commission's comments were considered at the Seventeenth Session of the Indian Labour Conference<sup>15</sup> (Madras,

15. Shri G.L. Nanda, presiding at the Conference, said: "The last two sessions of the Indian Labour Conference have yielded a basis for

27-29th July, 1959). The Government's Memorandum on the subject pointed out that from the information available it appeared that 209 cases were pending with the Supreme Court on November 30, 1958. It added: "The remarks made by the Law Commission need to be paid close attention. The observance

common action which has a deep significance and may have a far-reaching influence. Prior to this the machinery of industrial relations came into operation when differences had already developed and the intervention of Government was sought for dealing with the disputes. Not much had been attempted to foster internal harmony and prevent relations becoming embittered on account of steps on either side, induced by lack of restraint and consideration and disregard of inherent mutual obligations. The new endeavour is to move in three directions: (1) Positive measures to ensure that legal and contractual obligations of all sides are observed and adhered to. (2) Mutual recognition by the parties concerned of what they owe to one another and to the community and translating this into a set of do's and don'ts for the guidance of the conduct from day to day; and this has taken the form of a Code of Discipline in the industry. A Code of Conduct has also been framed to assist trade unions belonging to different sections of the labour movement in the country in arranging their mutual relations on a more satisfactory basis; and (3) Laying down of norms and yardsticks for settlement of various claims of the parties which should facilitate settlement and might furnish a well-considered basis for the authorities who may have to give decision... In industrial relations we can follow the way of peace or of conflict. In our conditions it cannot be both..."

"...We have on every occasion stressed the importance of negotiated settlements and an increasing recourse to voluntary arbitration instead of tribunals and courts. Provision has been made in the Industrial Disputes Act for giving legal force to arbitration awards. For disputes which cannot be thus resolved, there should be an intermediate stage of unofficial intervention in the form of informal mediation and voluntary arbitration. ...It is only when larger interests are at stake and new principles are involved that recourse to tribunals and courts may be considered justified if other means have failed."

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The Indian Labour Conference (Seventeenth Session) decided that increased use should be made of mediation and voluntary arbitration and adjudication should be avoided except in certain specified types of cases. Matters of local interest, not having any wider repercussions should, as a general rule, be settled through arbitration. On the understanding that there would be no element of compulsion in the matter from Government, the employers agreed to extend their full co-operation in developing this new approach to settlement of industrial disputes through mediation and arbitration.

of the Code of Discipline is likely to lead to a reduction in the number of cases going up to the High Courts and the Supreme Court. Even so, the Conference may discuss the desirability of reviving the Labour Appellate Tribunal."

The All-India Manufacturers' Organisation, in a memorandum submitted to the Conference, stated that the right to appeal was a fundamental right and therefore suitable machinery should be created for quick disposal of appeals. The Organisation suggested that either the Appellate Tribunal might be revived or a Special Bench of the Supreme Court created for the purpose. The High Courts should also be empowered to try, with appellate powers, certain types of major disputes of local character, i.e., confined to a particular region of the State. Only industrial disputes of importance should come before the proposed machinery for appeal. With this end in view, all types of disputes should be properly classified and restrictions should be placed on disputes coming before the Appellate Tribunal or the Special Bench of the Supreme Court. The A.I.M.O. added that the Labour Appellate Tribunal should function under the Ministry of Law. The members of the Appellate Tribunal or the Special Bench of the Supreme Court should be persons of the highest legal standing, thoroughly conversant with the industrial and labour questions. They should be assisted by highly qualified assessors, economists and accountants.

The H.M.S. submitted a detailed memorandum on industrial relations to the Government, in connection with the projected discussions on the subject at the Seventeenth Session of the Indian Labour Conference. The H.M.S. was of the view that for ensuring stability of industrial relations, appeals to the Supreme Court should not be allowed, and that appeals to the High Courts should lie only in respect of substantial questions of law. Supporting the revival of the L.A.T., the H.M.S. urged that some arrangements must be made for quick disposal of appeals by it. It added that the Government should follow a uniform policy about the personnel of the Appellate Tribunal. The H.M.S. hoped that the employers would give a categorical assurance about reducing resort to the Supreme Court and other Courts.

The H.M.S. supported the suggestion put forward by the Government of Madhya Pradesh for replacing the system of Industrial Tribunals by arbitration boards, and further favoured

the establishment of a Permanent Court of Industrial Arbitration with appellate jurisdiction. It recommended that such a Court should "be manned with proper, experienced and trained personnel with adequate continuity of service, security of tenure and a proper status and prestige, similar to that of members of higher courts" in the country.

Shri N.H. Tata (E.F.I.) explained that the increasing resort to the Supreme Court had been necessitated by the poor calibre of the personnel of some of the tribunals. Shri Tata added that the L.A.T. had done some kind of codification of awards for the guidance of lower tribunals, and, in the absence of the L.A.T., reference of the disputes to the Supreme Court was inevitable. Shri M.M. Varghese (A.I.O.I.E.) agreed with Shri Tata. Shri Lakshmi pat Singhania (A.I.O.I.E.) referred to the study made by the Ministry of Labour and Employment, which indicated that 72 per cent of the appeals to the Supreme Court had been decided in favour of employers. He suggested that a cadre of judges conversant with industrial matters should be set up for staffing the Industrial Tribunals. Shri Bharat Ram (A.I.O.I.E.) pointed out that the employers had gone to the Supreme Court not so much for any monetary gains, which were generally small, as for vindication of their rights.

Dr. G. S. Melkote (I.N.T.U.C.) opposed the revival of the L.A.T. and favoured the creation of a Special Bench of the Supreme Court. Shri G.D. Ambekar (I.N.T.U.C.) added that there could not be any "complete remedy" in the matter. Even if the L.A.T. were revived, appeals would still be preferred to the Supreme Court, thereby, leading to more delays. The creation of a Special Bench, which would consider not only legal points but also economic and social factors, would therefore be preferable. Shri S. R. Vasavada (I.N.T.U.C.) expressed similar views.

Shri Ram Desai (H.M.S.) emphasised the need for some kind of internal screening machinery to prevent appeals on frivolous matters from being preferred to the High Courts and the Supreme Court. Shri S.C.C. Anthoni Pillai (H.M.S.) pointed out that the Supreme Court was already functioning as a sort of appellate tribunal. While generally agreeing with the suggestion made by the representatives of the I.N.T.U.C. with regard to the creation of a Special Bench of the Supreme Court, he thought that the workers would not be able to make use of it due to the

heavy expense which would be involved. He, therefore, stressed that the abolition of the L.A.T. had been a mistake and that the best course was to revive it.

Shri S.A. Dange (A.I.T.U.C.) proposed that the High Courts should be given the power to constitute Labour Benches and award positive remedies. He was opposed to the creation of Special Bench in the Supreme Court inasmuch as it would take into account legal considerations only, while the High Court would combine in its awards judicial knowledge with the knowledge of industry. Shri Dange felt that the power of the Supreme Court to entertain appeals on awards and settlements should be taken away, if necessary, by a suitable amendment to the Constitution. The provision for appeals to the Supreme Court was being used more frequently by the employers to obstruct the just claims of the workers, as the employers had the money and other resources for such appeals. If, however, it were not possible to give the High Court the necessary appellate jurisdiction, the L.A.T. might be revived, provided care was taken that there would be no delays, that the legal costs would not be high and that the appointment of judges to the Industrial Tribunals would be made in consultation with the High Courts. Shri Dange added that he had no objection to the revival of the L.A.T. till better arrangements could be made.

Shri Srikantan Nair (U.T.U.C.) recalled that he alone had pleaded for the continuation of the L.A.T. for purposes of co-ordination. He added that the abolition of the L.A.T. had resulted in confusion in industrial awards. Favouring the revival of the L.A.T., he added that the retired judges generally took a pro-employer attitude and that the creation of a Special Bench of the High Court could not serve any useful purpose as the High Courts could only negative an award and not amend it. Furthermore, the workers would never have sufficient funds to fight appeals in the Supreme Court unless they were given some financial help. Even if a Special Bench of the Supreme Court or the High Court were set up, the difficulties with regard to the over-legalistic attitude of the judges would persist unless a separate cadre or faculty of industrial adjudicators were to develop. He emphasised that if delays in appeals were to be avoided the remedy lay in the revival of the L.A.T., with a restricted scope of reference. All the same, the jurisdiction of the Supreme Court

could not be curtailed and a certain measure of delay was unavoidable unless the Judiciary were made subordinate to the Executive, which obviously was neither feasible nor desirable.

Shri R. Venkataraman, Labour Minister, Madras, recalled that he had opposed the creation of the L.A.T. on the ground that it would adjudicate on principles of law and not on principles of equity. He thought that the revival of the L.A.T. would be introducing a concept which would be at variance with the concept of Industrial Tribunals. Shri Venkataraman suggested that the High Courts might be given revisionary powers which would enable them to interfere in matters concerning jurisdiction and not on facts. He explained that the High Courts might be vested with revisional jurisdiction in respect of matters falling within the purview of Section 115 of the Civil Procedure Code, and that suitable amendment to the appeal rules might be made to provide that the decision of the Tribunals would be final. Such an arrangement would greatly reduce the number of appeals going to the Supreme Court; and the High Courts would not very likely entertain any writ petitions, when there would be an alternative remedy by way of revision.

Shri K. P. Tripathi, Labour Minister, Assam, pointed out that the I.N.T.U.C. had urged for the abolition of the L.A.T. to cut down delays in appeals. But under the Constitution of India, appeals could be preferred to the High Courts and the Supreme Court, and therefore one suggestion was for the creation of a Special Bench of the Supreme Court. Shri Tripathi, however, thought that it would be very costly for the workers' representatives to appear before the Special Bench, particularly for those of the out-lying States. It would be more advantageous to revive the L.A.T., which because of regional nearness as well as otherwise would be less costly and which would be able to settle finally 70 to 80% of the appeals. Only 20 to 30% of the cases would then be taken to the Supreme Court and such an arrangement would therefore be cheaper than one of 100 per cent cases going to the High Courts and the Supreme Court. Shri Tripathi concluded that the revival of the L.A.T. would be more economical and convenient than the creation of a Special Bench of the Supreme Court.

Shri V.V. Dravid, Minister of Labour, Madhya Pradesh, pointed out that it would be a defeatist approach to go back on

the lessons of the past experience and revive the L.A.T. The question of laying down 'norms' for bonuses, wages, etc. could be best settled by tripartite discussions and agreements. As to appeals, efforts should be made to prevail upon the parties to reduce them.

While the consensus of opinion at the Conference was in favour of the revival of the Labour Appellate Tribunal, it was also generally accepted that the mere existence of the Labour Appellate Tribunal would not by itself eliminate appeals being taken to the Supreme Court. The Conference<sup>16</sup> did not arrive at any definite conclusion and recommended that the suggestions made during the course of discussions should be examined by the Government and the entire question should be placed before the Standing Labour Committee. These suggestions mainly were as follows:

- (1) The Supreme Court might be requested to set up a Special Bench from time to time so that special leave appeals entertained were disposed of expeditiously;
- (2) The powers of the Supreme Court might be curtailed so that special leave appeals were entertained only in cases where either important questions of law were involved or where the parties to the industrial dispute would suffer grave injustice;
- (3) The High Courts might be empowered to hear appeals as appellate authorities;
- (4) The High Courts might be empowered to hear revisions as revisional authorities, on the lines of Section 115 of the Civil Procedure Code;
- (5) The Labour Appellate Tribunal might be revived. No appeal should lie to the Appellate Tribunal unless an important point of law or principle or a large sum of money was involved or unless the Tribunal certified that the case was a fit one for appeal.

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Referring to the proposals for the revival of the L.A.T., the *Indian Factories Journal*, in an editorial note on "Is the Appellate

16. The Conference also decided that the principles and norms so far evolved through awards and judicial decisions on important issues should be compiled and published and made available for the guidance of authorities, parties and arbitrators.

Tribunal Coming Back!" in its issue of October 1, 1959, said:

"That the revival of the Labour Appellate Tribunal is not going to help the Supreme Court will be evident to anyone conversant with the provisions of our Constitution. The result will only be further delay in the settlement of industrial disputes as appeals would still go to the Supreme Court from the decisions of the Appellate Tribunal. We have been hearing much about quick settlement of disputes by direct negotiations and voluntary arbitration and we are not in a position to comprehend how the question of the revival of Labour Appellate Tribunal arose at all..."

"Another and serious difficulty with the Labour Appellate Tribunal was that the same members of the Tribunal had to give differing opinions on the same question when they sat at two different places. It must have been very awkward for the members but they had no other alternative. . . .

"...These appeals have come to the Supreme Court only because the lower courts have not been able to arrive at a satisfactory conclusion. Moreover, what we witness now is only the initial crop of cases which are bound to arise with the rapid industrialisation of the country after it attained Independence. When the principles laid down in these cases become firmly established, the scope for further appeals to the Supreme Court will be correspondingly reduced."

#### *The Ministry Studies the Delay Factor*

A study about the increase in the number of appeals to the High Courts and the Supreme Court was undertaken by the Implementation and Evaluation Division of the Ministry of Labour and Employment in 1959. This study disclosed that:

- (a) During the six years of its existence, the Labour Appellate Tribunal had disposed of as many as 2,095 appeals which worked out to 349 appeals per year. During this period only about 41 appeals per year (annual average for August 1950-August 1956) were taken to the High Courts; and 39 appeals per year (average for five years 1951-55) to the Supreme Court. It implied that a

useful purpose was served by the Labour Appellate Tribunal inasmuch as its decisions were not contested in about 84 per cent of the cases.

(b) After the abolition of the Labour Appellate Tribunal, the number of appeals to the High Courts rose from 41 to 225 (annual average for September 1956 to December 1958)—a rise of 450 per cent. In the case of the Supreme Court, the number of appeals increased from an average of 39 to 189 in 1957 (up to 31st October)—a rise of 385%. This phenomenal rise was partly due to an increase in the number of awards by about 50 per cent. The increase in the number of appeals was remarkably high in West Bengal, Kerala, Madras and U.P.

(c) Appeals to the High Courts and the Supreme Court were being made under Articles 226 and 136 of the Constitution respectively. The large number of appeals to Supreme Court was partly due to the restricted scope of Article 226 and the wide scope of Article 136.

*The Standing Labour Committee Considers  
the Different Alternatives*

The matter was next considered at the Eighteenth Session of the Standing Labour Committee (New Delhi, January 1960). The Government's Memorandum placed before the Committee dealt exhaustively with the five major suggestions made at the Seventeenth Session of the Indian Labour Conference. The observations made in the Memorandum on these suggestions were as follows:

(1) The suggestion that a Special Bench of the Supreme Court be set up so that special leave appeals in labour matters were disposed of expeditiously was not likely to lead to speedy disposal unless an appellate authority were constituted under the labour legislation to hear appeals from the decisions of the tribunals. In the absence of such an authority the parties aggrieved would file special leave appeals in the Supreme Court. As would appear from the statistics collected by the Law Commission, the number of special leave appeals had considerably increased after the abolition of the Labour

Appellate Tribunal. The disposal by the Supreme Court was not likely to keep pace with the growing number of special leave appeals, assuming a Special Bench was set up from time to time. The Law Commission was in favour of constituting an appellate authority so that the Supreme Court could get proper assistance and the delays in disposal were minimised as far as possible. Furthermore, special leave appeals would involve considerable expenditure which labour could ill afford.

- (2) The suggestion regarding the curtailment of the powers of the Supreme Court was of an extreme nature and would involve an amendment of the Constitution. Industrial Tribunals came within the provisions of Article 136 which vested in the Supreme Court extraordinary powers, to be exercised in rare and exceptional cases in the light of certain principles enunciated by the Supreme Court itself. The provisions of Article 136 of the Constitution were worded in the widest terms possible; the powers conferred by it were exercised by the Supreme Court to advance the cause of justice, and interference with the decisions of the Tribunals in the light of the principles enunciated by the Supreme Court should be regarded as a welcome relief. According to the Law Commission, this jurisdiction of the Supreme Court must remain unrestricted.
- (3) The suggestion that the High Courts might be empowered to hear appeals as appellate authorities would involve an amendment of the Industrial Disputes Act, 1947. Ordinarily, the High Courts, as appellate authorities, must have the powers analogous to those of the Tribunals so that they have ample control over the case in the matter of affording relief according to law and justice, unless the powers were restricted by law. Before the Industrial Disputes (Appellate Tribunal) Act, 1950, was repealed in August 1956, a restricted appeal to the Labour Appellate Tribunal was allowed under that Act. It should be possible to provide appeals to the High Courts on the same lines or on some other grounds considered suitable in the light of the matters enumerated

in the Schedules appended to the Industrial Disputes Act. There were, however, certain facts which would require consideration before undertaking such legislation. The strength of the Judges of the High Courts would have to be increased so as to keep pace with the number of rising appeals.

The Government Memorandum added that under the provisions of Article 202(3)(d) of the Constitution, the expenditure in respect of the salaries and allowances of Judges of High Courts was to be charged on the Consolidated Funds of the States and it was for consideration by the State Governments whether they would like to incur necessary expenditure to increase the number of the High Court Judges. There was also another important consideration to be taken into account. The Industrial Disputes Act sought to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards were generally given in the light of the circumstances peculiar to each industrial dispute, and the Tribunals were, generally speaking, free from the restrictions of technical considerations imposed on law courts. It was well-established that the Tribunals could create new obligations or modify contracts in the interests of industrial peace or to prevent unfair labour practices or victimisation. As appellate authorities it might not be very easy for the High Courts (exceptions apart) to interpret the industrial law in the same manner as the Labour Appellate Tribunal used to do, keeping in view the principles of social justice and changing social concepts.

The suggestion had, however, the advantage that writ petitions under Articles 226 and 227 would not lie against the decisions of the High Courts as appellate authorities and, to that extent, the delays would be minimised.

(4) As regards the suggestion that the High Courts might be empowered to hear revisions as revisional authorities, the High Courts could not, under the provisions of Section 115 of the Civil Procedure Code, attack findings of facts of the subordinate courts or substitute their own

appreciation of evidence for that of the subordinate courts. These were functions of a Court exercising appellate jurisdiction. The High Courts could, however, look into the evidence with a view to determining whether the subordinate courts had exercised a jurisdiction which they did not possess or had failed to exercise a jurisdiction which they had, or had acted illegally or with material irregularity in the exercise of their jurisdiction. The High Courts could interfere on the ground of illegality or material irregularity in the exercise of the jurisdiction by subordinate courts in certain types of cases. The Memorandum added that the High Courts would be competent to interfere with the decisions of the Tribunals in similar instances. However, the scope of revision being necessarily limited, cases might conceivably arise which would fall outside its scope, and the finality of the order of the Tribunals would in such cases cause undue hardship to the parties to the industrial dispute. For instance, if the Tribunal were to exercise its jurisdiction in the manner prescribed but it arrived at conclusions or decisions which were erroneous in law or fact, *prima facie* it would not have acted illegally or with material irregularity but would have decided erroneously in the proper exercise of its jurisdiction.

(5) About the suggestion for the revival of the L.A.T. with restricted scope to hear appeals, the Government Memorandum conceded, "there was a certain amount of codification of awards and co-ordination of the activities of the tribunals as a result of the decisions of the Labour Appellate Tribunal which served as a guide to the tribunals in framing their awards in matters of importance to the economy of the country". After the L.A.T. was abolished in September 1956, the orders of the tribunals were made final and it was further provided that they could not be questioned by any court in any manner whatsoever. Though the Supreme Court under the provisions of Article 136 of the Constitution, and the High Courts under Articles 226 and 227, could interfere with the decisions of the Tribunals, they could

do so only in exercise of supervisory jurisdiction and not appellate or revisional jurisdiction, with the result that they would not review findings of facts or errors of law reached by the Tribunals which did not occasion injustice in a broad and general sense, even if these were erroneous. The Memorandum stressed that in the absence of an appellate authority erroneous decisions which did not call for interference under the extraordinary powers of the High Courts and the Supreme Court would remain erroneous and lead to discontent. Cases involving large stakes were being handled by the tribunals whose decisions were final. If an alternative and equally efficacious remedy was open to an aggrieved party, it could be required to pursue that remedy and not invoke extra-ordinary powers. If the L.A.T. were to be revived, some solution would have to be found to eliminate avoidable delays. In industrial matters speedy disposal was necessary for reasons that were obvious.

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Inviting attention to the findings of the Law Commission and the results of the enquiry<sup>17</sup> made by the Implementation and Evaluation Division of the Ministry of Labour and Employment, *the Government Memorandum concluded that the balance of advantage lay in favour of the revival of the L.A.T.*

At the Eighteenth Session of the Standing Labour Committee (January 1960) the Chairman, Shri Gulzari Lal Nanda, Minister of Labour and Employment, pointed out that the Ministry of Law, which had examined the suggestions made at the last Indian Labour Conference held in Madras in July 1959, had recommended that, having regard to the past experience with the working of the L.A.T., it would be preferable to revive it.

Shri G.D. Ambekar (I.N.T.U.C.) said that it was not a correct appreciation of the situation to say that appeals to the Supreme Court had increased because of the abolition of the L.A.T. Even if the L.A.T. were to be revived, it would be necessary to prevent appeals to the Supreme Court by a suitable amendment to the

17. For details, please see p. 169.

Constitution, which was not possible. Hence the I.N.T.U.C. was opposed to the revival of the L.A.T. The workers could ill afford more than one appeal whether it be to the Special Bench of the Supreme Court or the L.A.T. Shri Ambedkar added that in one dispute the L.A.T. had taken three years to decide it; and the Supreme Court, four years. The average time taken was 3 to 4 years at each stage of the appeal. Shri S.C.C. Anthoni Pillai (H.M.S.) stated that the abolition of the L.A.T. was a disservice done to the labour. The increase in the number of appeals to the High Courts and the Supreme Court was due to the divergencies in judgements, following the abolition of the L.A.T.

The A.I.T.U.C. submitted a memorandum to the Eighteenth Session of the Standing Labour Committee in which it stated that it was agreeable to the revival of the L.A.T., provided provision was made for the speedy disposal of cases by laying down a time-limit. The A.I.T.U.C. added that there should also be restriction on appeals against decisions of the L.A.T. to the High Courts and the Supreme Court, especially under Article 136 of the Constitution. If necessary, even the Constitution should be amended for the purpose. Shri Tridib Chaudhury, Observer from the U.T.U.C. at the meeting, agreed with the stand taken by the A.I.T.U.C.

Shri Lakshmi pat Singhania (A.I.O.I.E.) said that the revival of the L.A.T. would reduce the number of appeals and stabilise labour relations in the long run. He was opposed to the proposal for providing direct appeals to the Supreme Court, for the reason that it would eliminate the existing examination of the legal aspects of the case by the High Courts. He added that the staffing of the Industrial Tribunal by retired judges was not desirable and that a special cadre of judges should be created for the purpose.

Shri H.P. Merchant (A.I.M.O.) reiterated the views expressed by the A.I.M.O. in its memorandum placed before the Seventeenth Session of the Indian Labour Conference (July 1959). He urged that the Judges of the L.A.T., when it were revived, should be appointed in consultation with the Chief Justice. Shri N.H. Tata (E.F.I.) said that the L.A.T. had a sobering influence over Industrial Tribunals. Shri Tata added that the employers would not press for the revival of the L.A.T. if the workers did not want it. However, it would be worthwhile to note

that whenever the workers had felt dissatisfied with the awards of the L.A.T., they too had gone to the Supreme Court. Shri Bharat Ram (A.I.O.I.E.) observed that the Supreme Court always did justice, but it took a long time to decide appeals. He felt that it should be possible by suitable arrangements to get quick judgements from the L.A.T., which might be revived. The Chairman pointed out that the L.A.T. had, generally speaking, done a good job in achieving uniformity in industrial awards, though there was need for further research in the matter before any final judgement could be pronounced.

Shri V.V. Dravid, Labour Minister, Madhya Pradesh, said that before the creation of the L.A.T., bonus disputes used to be resolved to the satisfaction of all the parties concerned; but after the famous L.A.T. Full Bench Formula, bonus had become a bone of contention. Shri Dravid doubted if the L.A.T. had done at all any useful work in laying down norms. He thought it would be ridiculous to revive the L.A.T. only a few years after its abolition. It would, therefore, be worthwhile first to make an attempt to reduce the number of appeals through internal screening committees. The question of the revival of the L.A.T. might be considered only after other methods had failed to resolve the problem.

Shri K.P. Tripathi, Minister of Labour, Assam, reiterated the views expressed by him at the Seventeenth Session of the Indian Labour Conference (July 1959) that it would be better and cheaper to revive the L.A.T. than set up a Special Bench of the Supreme Court, access to which would be beyond the means of the workers.

Shri Shantilal H. Shah, Minister of Labour, Bombay, said that appeals to the Supreme Court were a time-consuming process and a case generally took four years. Even if a Special Bench of the Supreme Court were set up, there would be no guarantee that a particular team of judges would continue on it and specialise in industrial adjudication in due course of time. He felt that if the High Courts were given appellate jurisdiction in regard to labour disputes it would not be necessary to revive the L.A.T. He agreed that there was need for manning the Industrial tribunals with judges of higher status, which would, he thought, reduce the number of appeals by about 80 per cent. As things stood, the High Court Judges did not like to sit on

Industrial Tribunals because a writ could lie to a junior judge in the same Court against their judgements.

Shri Abdus Sattar, Minister of Labour, West Bengal, said that his State Government was opposed to the revival of the L.A.T.

The Chairman pointed out that delays in appeals could possibly be avoided by increasing the number of Judges of the L.A.T. The revival of the L.A.T. might reduce the number of appeals. The Labour Minister added that he had an open mind on the subject and would have gone ahead with the proposal for the revival of the L.A.T. if all other parties were in its favour, despite the opposition of the I.N.T.U.C., considering that it was not possible to satisfy everybody. The discussions at the Standing Labour Committee<sup>18</sup> had, however, indicated divergence of opinion. He, therefore, felt that it might be preferable to defer the question of revival for the time being and to reconsider it later after collecting detailed information about delays in disposal, number of references to the High Courts and the Supreme Court, etc., from State Governments.

18. The Standing Labour Committee, at its Eighteenth Session (second meeting, March 1960) resolved that the basic elements of sound industrial relations would be strong trade unions, enlightened employers and minimum intervention by Government. It suggested that the policy as laid down in the Second Five Year Plan which gave adequate scope for the parties to come together on their own initiative for settlement to their differences and empowered the Government to refer disputes to adjudication in the event of a breakdown should be so modified as to include (a) strengthening the current emphasis on reaching bipartite agreements and tripartite conventions like the Code of Discipline on a voluntary basis, and extending their coverage to both the public and private sectors, and (b) more intensive efforts at securing agreement for reference of disputes to voluntary arbitration.

During discussions on Labour Policy in the Third Five Year Plan, the employers' representatives suggested that bonus, which was an uncertain element in the wage cost, should be done away with. After some discussion, it was agreed that the question was one of evolving some suitable norms so that the uncertainty associated with it was minimised. It was agreed that for this purpose a tripartite Bonus Commission, which should go into the question and evolve some suitable norms, should be appointed.

## 7. THE ATTEMPT TO COLLECT FACTS

The Ministry of Labour and Employment, as desired by the Standing Labour Committee, addressed the State Governments, in April 1960, requesting them to make an assessment of the relevant factual materials, e.g., quick disposal of cases, reducing reference to the High Courts and the Supreme Court, maintaining uniformity, continuity, etc. by the Labour Appellate Tribunal. They were also asked to furnish their comments on the proposal to revive the Labour Appellate Tribunal.<sup>19</sup>

The replies received from States were briefly as follows:

*Andhra Pradesh*

The State Government pointed out that the Labour Appellate Tribunal had generally been successful in quick disposal of cases and in reducing, to some extent, references to the High Court and the Supreme Court. In achieving the other objective, i.e. maintaining uniformity, it had succeeded only partially—not to the same extent as the Supreme Court.

*Assam*

The Government of Assam stated that only a very few appeals were preferred before the Labour Appellate Tribunal and the Supreme Court. The time taken in their disposal had, in no case, been less than one year.

*Bihar*

The State Government, after an assessment of the data, found that the Labour Appellate Tribunal used to take a long time in disposal of appeals. It felt that the revival of the L.A.T. would not serve the intended objective; on the contrary, it would lead to more litigation and more delays in the implementation of awards, as there was always a tendency both among the employers and the workmen to file appeals on practically all points of the awards. There was also no guarantee that parties would not go up further before the High Court or the Supreme Court to get the orders

19. The Union Minister of Labour and Employment announced in the Lok Sabha on April 11, 1960, the decision of the Government of India to set up a tripartite Bonus Commission to recommend principles, norms and methods of calculating bonus for workers.

of the Labour Appellate Tribunal set aside. The proposal might, therefore, be dropped.

#### *Gujarat*

#### *Maharashtra*

In the absence of complete information about the time taken by the Labour Appellate Tribunal and the High Court in the disposal of cases and the number of appeals filed before the High Court and the Supreme Court, the State Government said that it was not possible to state whether the Labour Appellate Tribunal had been successful in achieving the objectives for which it had been constituted.

#### *Kerala*

The State Government doubted that the revival of the Labour Appellate Tribunal would solve the problem of speedy disposal of cases, so long as the Supreme Court had the power to grant special leave to appeal. The existing Industrial Tribunals and Labour Courts were the final judges of facts except when the High Court or the Supreme Court interfered on points of law. If the Appellate Tribunal were reconstituted, there would be further right to appeal on questions of fact as well, and that might entail delays.

#### *Madhya Pradesh*

The State Government pointed out that the Labour Appellate Tribunal had taken less than one year's time in the disposal of 31 cases out of a total of 42, and more than two years only in two cases. In the matter of quick disposal of cases, the Labour Appellate Tribunal had been a very useful institution. During the term of the Labour Appellate Tribunal only 4 cases had been referred to the High Court and only one to the Supreme Court, as against 35 and 2 respectively since its abolition. As regards the achievement of other objectives, the Labour Appellate Tribunal had not much to its credit. In many cases the different Benches of the Tribunal had given conflicting decisions. Even the decisions of the Appellate Tribunal were not final; only the highest court could be successful in maintaining uniformity and continuity of experience. The mere revival of the L.A.T. would not help much to reduce references to the High Court and the

Supreme Court, to achieve uniformity and continuity of experience and to ensure at the same time quick disposal unless it were made one of the Benches of the Supreme Court and the access to the High Courts (in labour matters by way of revision, appeal, etc.) was prohibited, even by amending the Constitution, if necessary.

#### *Madras*

The Government of Madras stated that about 491 cases had been disposed of by the L.A.T.'s Bench in the State. The Government added that it was not possible to assess the average time taken by the Labour Appellate Tribunal, as compared to the High Court and the Supreme Court, for disposal of cases. Generally speaking, the L.A.T. had only served as one additional stage in the process of litigation and there had been no indication that it had helped to reduce the number of appeals to the High Court and the Supreme Court to any appreciable extent. There appeared, therefore, to be no justification for its revival unless it was made the final court of appeal on labour matters.

#### *Mysore*

The State Government favoured the revival of the Labour Appellate Tribunal in the interest of quick disposal. It added that the Appellate Tribunal in the past had served a very useful purpose in evolving correct and uniform principles having a bearing on industrial disputes.

#### *Orissa*

The State Government pointed out that the number of industrial awards in Orissa had been very small before 1956; the number had increased after that but the number of cases going to the High Court and the Supreme Court was still not large.

#### *Punjab*

The Government of Punjab stated that there had been no increase in the number of cases before the High Court after the abolition of the Labour Appellate Tribunal. The number of disputes referred to adjudication had risen during the period 1955-1959, but the number of disputes going from the State to the Supreme Court had been very small and could be ignored for the purpose

of study. The State Government urged that there was absolutely no case for the revival of the Appellate Tribunal, as it would only add another link to the chain of appeals. The awards of the Appellate Tribunal could be challenged in the High Court/Supreme Court under the general powers conferred by the Constitution, and its revival would merely serve to prolong the agony of workers.

### *Rajasthan*

The State Government drew attention to the fact that the earlier decisions of the Labour Appellate Tribunal had commanded universal respect and approval; and it was only during the later days of its life that discontent against its working and its approach in general began to find expression and ultimately led to its abolition. With this avenue for appeal closed, the aggrieved party had either to approach the High Court where possible, for such relief as the latter could give with its limited jurisdiction, or go to the Supreme Court by way of appeal by special leave against the decisions of the Industrial Tribunals; and as a result the Supreme Court had been flooded with such appeals. Even if the law were amended to enable the High Court to hear appeals from the award of the Tribunals, the hardship caused by the inordinate and inevitable delays in the disposal of cases would remain a serious problem.

The State Government added that the constitution of Special Benches in the High Courts for hearing labour cases was also not likely to solve the difficulties, and that the revival of the Labour Appellate Tribunal would be a better solution than vesting the Courts with powers to hear appeals from the awards of Tribunals. A suitable number of Benches and provision for Circuit Benches would have to be made. Proper selection of persons of calibre and experience of judges and proper safeguards would be equally necessary.

### *Uttar Pradesh*

The State Government found that there was not much difference in the rate of disposal of cases as between the Labour Appellate Tribunal and the High Court (in deciding writs). The L.A.T. had undoubtedly been successful in bringing about and maintaining uniformity in the case law concerning industrial disputes;

but, at times, the various Benches of the Labour Appellate Tribunal had also expressed divergent views on the same matter. The State Government clarified that most of the cases referred to adjudication in U.P. concerned wages or bonus. The setting up of Wage Boards by the Government of India for major industries and the proposed appointment of a Bonus Commission would, it was hoped, go a long way in reducing the number of labour disputes. As regards the increase in the number of writs, it was felt that even if the Labour Appellate Tribunal were revived, the writs to the High Court and the Supreme Court could not be ruled out. Its revival might even mean further harassment to the workmen, for the employers would drag them to the L.A.T. before exhausting other avenues. So long as there existed "high-powered" Labour Courts and the Industrial Tribunals, there was little justification, in the opinion of the State Government, for the revival of the L.A.T.

### *West Bengal*

The Government stated that the L.A.T. had been successful in quick disposal of appeals against decisions of the industrial tribunals. It had also succeeded in reducing references to the High Court and the Supreme Court, in maintaining uniformity, continuity of experience, etc. Taking broadly, the average time taken by the L.A.T. in disposal of cases had ranged from one year to one and a half, while the High Court and the Supreme Court took "a little more" than that, i.e. two years to two and a half.

## 8. THE DECISION "NOT TO REVIVE"

### *Memorandum by the I.N.T.U.C.*

The I.N.T.U.C. submitted to the Government of India in March, 1960, a comprehensive Memorandum on "Labour Policy in the Third Five Year Plan".<sup>20</sup> Reiterating its basic faith in the

20. The Third Five Year Plan (1961-66), which was approved by the National Development Council in June 1961, noted in the course of the Second Five Year Plan a new approach was...introduced to counteract the unhealthy trends and give a more positive orientation to industrial relations, based on moral rather than legal sanctions. The stress now is on prevention of unrest by timely action at the appropriate stages and giving adequate attention to root causes. This involves a basic change in the attitudes and outlook of the parties and the new set

principle of settling disputes through voluntary arbitration, the Memorandum stated that compulsory adjudication was certainly not a very desirable method of solving industrial disputes, but then it was a better solution than strikes or lock-outs which inevitably led to dislocation of production and upset the planned progress of the nation. It pointed out that all progress achieved by the working class since Independence had been mainly due to the machinery of compulsory adjudication and the element of compulsion had invariably been on the employers all along, for in almost all cases the demand for adjudication had come from the workers.

The I.N.T.U.C. complained that, of late, the machinery of adjudication had not been found to be effective in redressing the grievances of the workers mainly because of the delay inherent in the process. With the abolition of the L.A.T., it was thought that delays in the settlement of disputes through adjudication would be cut down. But contrary to the expectations there had been enormous delays because employers had started increasingly to file either writ petitions in the High Courts or appeal by special leave to the Supreme Court, where matters remained pending for a longer period of time, involving also heavy expense. This had given rise to a feeling in some quarters in favour of the revival of the Appellate Tribunal in order to avoid appeals to the Supreme Court. The I.N.T.U.C. was of the opinion that

of readjustments in their mutual relations...The fruits of progress should be shared in an equitable manner and the economic and social organisation which is being created must be in keeping with the concept of a socialist society"...“The surpluses that are generated are a social product, to which neither the employer nor the working class can lay an exclusive claim; their distribution has to be according to the worth of the contribution of each, subject to the requirements of further development and the interests of all sections of society, in particular, the satisfaction of the basic needs of all its members”. It was recommended that the labour relations policy during the Third Plan period should concentrate on a full awareness of the obligations under the Code of Discipline and reinforcement of its underlying sanctions—the consent of the parties; increasing application of the principle of voluntary arbitration in resolving differences between workers and employers; progressive extension of the scheme of joint management councils to new industries and units; and re-adaptation in the outlook, functions and practices of trade unions to suit the new conditions which had arisen or were emerging.

employers, having once developed the habit of appealing to the Supreme Court, would persist in that habit even if the L.A.T. were revived, and would go in appeal to the Supreme Court against the decisions of the L.A.T. The Labour Appellate Tribunal if re-instituted would thus only become a new factor for additional delay. The I.N.T.U.C., therefore, suggested that a Bench of the Supreme Court should be authorised to act as the appellate body and that the Bench should be manned by judges who were specialists in labour and industrial economics; that it should sit in different centres in the country to hear and decide appeals within a definite time-limit.<sup>21</sup> The formalities and expenditure involved in such appeals should also be cut down to the minimum. Even that, however, would not provide a lasting and desirable solution to the problem which perhaps could be found only in voluntary arbitration. But the machinery of adjudication could not be given up totally in the context of the existing attitude of the employers generally.

The I.N.T.U.C. at its Eleventh Session (April 1960), stated in a Resolution that it had been expected that the L.A.T. would introduce an element of uniformity both in the approach and the method of solving bonus disputes. But the L.A.T. adopted different and totally unrelated bases for settlement of bonus disputes in the country. It began by upsetting the established practice of paying bonus on an industry-wise basis. While in some cases the L.A.T. followed what was known as the Full Bench Formula of available surplus, in other cases it linked bonus to dividends and in several others to production. Even the Full Bench Formula had become a fruitful source of disputes, instead of solving them.

The Resolution of the I.N.T.U.C. concluded that the revival of the L.A.T. would lead to further delays in the settlement of industrial disputes. Whereas under the existing Constitution of India the right of appeal to the Supreme Court could not be curtailed, it was urged that the procedure before the Court should be inexpensive and speedy in the settlement of industrial disputes.

21. The Memorandum also urged the early appointment of the Bonus Commission to prescribe norms and standards to guide the settlement of bonus disputes.

*Indian Labour Conference**(October 9-10, 1961)*

The issue of the revival of the L.A.T. was considered again at the Nineteenth Session of the Indian Labour Conference held at Bangalore on 9th and 10th October, 1961.<sup>22</sup>

The Government's Memorandum before the Conference indicated the replies received from the State Governments with regard to speed of disposal and number of references to the

22. In his opening address to the Indian Labour Conference, Shri Gulzari Lal Nanda, Minister of Labour and Employment, and Chairman of the Conference, said: "...the Code of Discipline is no longer on trial. It has established its worth in one direction at least. The number of working days lost on account of industrial disputes which had an upward trend earlier has been steadily and continually going down from year to year since the adoption of the Code in June 1948..."

"India is in need of economic and social change—a great deal of it. There are two roads to the change—one through the compulsion of law or authority and the other through a process of voluntary transformation, the responsibility for which is assumed by groups of individuals in free association. In our industrial life, the stress is on the voluntary method. Workers' and employers' organisations have taken upon themselves to promote voluntary collaboration in an expanding range of functions. This is a vital process of decentralisation in industrial administration. The spirit which will inspire the advance in this direction is far more important than the forms which may be adopted from time to time. An industrial establishment in the public or private sector should function as a small community of which each member has rights as well as obligations, as a partner and all share a community of outlook. Each individual will thus be able to express and develop his personality and his contribution to the common well-being will be greatly augmented. Thus the content of democracy will be enriched and the energy of the masses becomes available for constructive purposes on a scale not hitherto conceived of. A common basis of unity for all the participants is the test of common good. A way of life which breeds conflict can only disrupt society. It is only a co-operative structure which can endure.

"I may be accused of adopting an idealistic approach divorced from the realities of life. I wish to say that I am basing my appeal on sensible and enlightened self-interest and not on any exaggerated faith in altruistic instincts. I do not concede, however, that material incentives are the whole of the story for a normal human being. Non-material satisfactions may well form a considerable part of the quantum of happiness which a person can draw out of life. This is a dynamic approach. We are so keen on making our economic life dynamic and obtaining a high rate of economic growth. There is need also for a more rapid rate of growth of our ideas and outlook."

L.A.T. and the Supreme Court, etc. It pointed out that there had since been considerable improvement in regard to the number of cases pending before the Supreme Court. A separate Bench had been dealing with labour cases as and when they were ready for hearing. During 1960, 125 appeals were filed, and 222 had been brought forward from the previous year. Of these 347 appeals, 249 were disposed of during the year. Of the pending cases (98) at the end of 1960, 58 were below one year, 13 between 1 and 2 years, 27 between 2 and 3 years old. They were likely to be disposed of as soon as they were ready for hearing<sup>23</sup>.

23. A study of appeals, made by the Implementation and Evaluation Division of the Ministry of Labour and Employment, indicated that of the 549 appeals concerning industrial disputes filed by the employers and the workers in the Supreme Court during 1955-59, 421 (77%) had been filed by the employers and 128 (23%) by workers or their unions. Of these, 362 appeals had been decided by the Court by the end of 1959. In addition, the Court had decided 34 appeals filed before 1955. The conclusions of the study were as follows: (a) Of the 286 employers' appeals, 181 (63%) were wholly unsuccessful—139 (49%) at the preliminary hearing (Kachi Peshi) stage and 42 (14%) after having been admitted. The 42 unsuccessful appeals of employers, leaving out cases dismissed at the preliminary hearing, caused delay in the payment of wages, dearness allowance, bonus, retrenchment compensation, enforcement of gratuity scheme, revised leave rules, etc. in 22 appeals; in 8 appeals the reinstatement of workers was held up; in another 8 cases technical objections delayed adjudication proceedings while in the remaining 4 cases workers were kept in suspense as employers sought permission to dismiss them or actually dismissed them (in 1 case) during pendency of adjudication. (b) Employers were wholly successful in 88 (31%) cases and partly successful in 16 (6%) cases. Of the 88 cases in which employers were wholly successful, 42 related to termination of service of an individual or a few workmen, 20 to bonus, 17 to wages and dearness allowance, and 9 to miscellaneous questions. In some of these cases important questions of law having a wide repercussion were involved, viz., right to retrench workers owing to shortage of raw materials, principles of determining bonus, employers' responsibility to provide houses to their employees, payment of lay-off compensation, etc.; while in most of them the issues concerned the right of employers to dismiss or discharge an individual or a few workmen or elucidation of Labour Appellate Tribunal's Formula regarding bonus and its re-calculation in the case of individual establishments. (c) Of the 110 workers' appeals, 106 (96%) were not successful—71 (64%) were dismissed at the Kachi Peshi stage and 35 (32%) after admission. Workers were successful in 3 (3%) cases and partly successful in 1 (1%) case. (d) The large number of appeals dismissed at the preliminary stage was an indication

The Memorandum concluded: "In view of the present situation of cases pending in the Supreme Court and also of the divergence of opinion expressed by the State Governments, the Conference may consider whether the proposal for the revival of Labour Appellate Tribunal need be pursued any further."

During discussions at the Conference, Shri Kanti Mehta (I.N.T.U.C.) said that his organisation was agreeable to the revival of the L.A.T. on the condition that there would be no further appeal from the decisions of the L.A.T. to the Supreme Court and there would not be any delay in its decisions. Shri G. Ramanujam (I.N.T.U.C.) said that the revival of the L.A.T. would only lead to delays and would not achieve the object of fair and prompt settlement of disputes, and, furthermore, with the pronounced emphasis on arbitration, it was not necessary to revive the L.A.T. Shri S.A. Dange (A.I.T.U.C.) reiterated the views expressed by him at the Seventeenth Session of the Indian Labour Conference and added that the L.A.T., if revived, would constitute an additional intervening level between the Tribunals and the Supreme Court and this would only add to delays.

Shri Nepal Bhattacharya (U.T.U.C.) observed that the workers did not have sufficient funds to fight cases in the Supreme Court and it would be preferable to revive the L.A.T. if it were provided that there would be no further appeal to the Supreme Court.

Shri N. H. Tata (E.F.I.) urged that there must be, under the democratic form of Government in India, provision for at least one appeal against the awards of Tribunals. The L.A.T. had done good work and the opposition of the workers' organisations to its revival was a sheer prejudice. The workers' organisations, if they were not agreeable to its revival, could not justifiably complain when the employers took disputes to the Supreme Court.

of the tendency to file appeals against the awards of tribunals on un-substantial grounds. (e) 47% of the cases decided, excluding Kachi Peshi cases, related to termination of service of workmen, 13% to wages and dearness allowance, 20% to bonus and the remaining 20% to disputes regarding housing, superannuation, gratuity, interpretation of provisions of Factories Act, Workmen's Compensation Act, etc. (f) In 51% cases, for which information was available, the monetary stake involved to employers was less than Rs. 25,000; it was less than Rs. 10,000 in about 32% cases. (g) 8% of the cases in which workers were a party were not defended by them or on their behalf.

Shri Tata added that the arbitration machinery would not necessarily be cheap and expeditious. Shri Tata suggested that the L.A.T. might be revived on a purely experimental basis for a period of two years. Shri S.R. Vasavada (I.N.T.U.C.) opposed it on the ground that it would not be a workable proposition unless the employers were to give an undertaking that they would not resort to the Supreme Court during the period of experimentation, and, as the employers were not prepared to do so, the experiment would not be worthwhile at all.

Shri H.P. Merchant (A.I.M.O.) said that his Organisation was in favour of the revival of the L.A.T., subject to the stipulation that it should function under the Ministry of Law.

The Chairman, Shri Gulzari Lal Nanda, concluded that the consensus of opinion among the representatives of the State Governments and the workers' organisations was against the revival of the L.A.T. The Chairman explained that access to the Supreme Court under the Constitution could not be barred and therefore the revival of the L.A.T. would only add one more stage to decisions on appeals. He added that conditions for successful arbitration had to exist before it could become all-pervasive, comprehensive and exclusive of every other course of settling disputes. Accordingly, he would not insist that the employers should go to arbitration in every case in spite of the provisions to that effect in the Code of Discipline.<sup>24</sup>

24. The cases of breach of the Code of Discipline reported to the Central Implementation and Evaluation Division were 777 for the period June 1958 to 31 December, 1959; 553 in 1960; 709 in 1961 and 993 in 1962. The number of complaints received about the violation of the Code of Conduct were 59 in 1959, 35 in 1960 and 30 in 1961. The tripartite character of the implementation machinery has, it is reported, greatly helped in the observance of the Code of Discipline. The managements and the unions have in recent years shown greater readiness to set right acts of omission and commission on their part. The sanctions applied by the unions included dis-affiliation, condemnation of unauthorised strikes and acts of violence, and compulsory resignation from union offices; and those by the employers, warnings, dis-affiliation from the membership of the national body, etc. The tripartite implementation machinery also has, through persuasion, in several cases succeeded in securing out-of-court settlements, in withdrawal of legal proceedings after their initiation and in obtaining recognition for unions observing the Code.

The I.N.T.U.C., in its Annual Report for December 1957 to January

The Indian Labour Conference decided that the L.A.T. need not be revived. However, the question of delays in the disposal of cases, the Conference felt, should be studied further and placed before the Standing Labour Committee for consideration.

#### 9. THE SUPREME COURT UPHOLDS THE FULL BENCH BONUS FORMULA

Apart from the long delays in the award of judgements by the L.A.T. in appeals, another major reason for the vehement opposition by the workers' organisations to the L.A.T. during its life,

1959, had said: "The Code of industrial discipline and the Code of Conduct...no doubt herald a new chapter in the industrial relations of the country." In its Report for February 1959 to March 1960, the I.N.T.U.C. added: "The Code...has been a great step towards preservation of healthy and peaceful relations between the industries and the workers." The consensus of opinion at a seminar, organised by the Employers' Federation of India and the All-India Organisation of Industrial Employers in September 1961 was that the Code had considerable potentialities for bringing about better industrial relations. At the 29th Annual General Meeting of the E.F.I., Shri Tata reiterated, "It is very gratifying to find that, in the course of the working of the Code of Discipline during the last 3 years and more, industrial strife, in terms of man-days lost, has gone down appreciably."

The Union Ministry of Labour and Employment, in its Annual Report for 1959-60, observed, "The Code of Discipline symbolises the current policy of the Government to build up an industrial democracy on voluntary basis and to preserve industrial peace with the help and co-operation of employers and workers. It is a policy which is in line with the main recommendation of the Second Plan, viz., to avoid adding to the existing labour legislation, as far as possible, and to develop voluntarily a mutual sense of responsibility and an understanding between employers and workers."..."The Code has created an awareness among parties about their rights and responsibilities towards each other and provided a forum where they can iron out their differences. This has resulted in a greater understanding on both sides of each other's point of view as also of Government's labour policy". In its Annual Report for the year 1961-62, the Ministry said, "Part of the improvement in industrial relations in the last few years is attributable to the change of emphasis in Government's labour policy from mere prevention of unrest to the creation of an atmosphere of constructive co-operation. The main instruments of this policy have been the mutually accepted Codes like the Code of Discipline in industry and the Code of Conduct. The contribution of the Code of Discipline in Industry to better industrial relations has been significant."

as the reader would recall, had been their dissatisfaction with the Full Bench Formula on bonus which was first enunciated by the L.A.T. in 1950 in the dispute concerning *Millowners' Association, Bombay, and Rashtriya Mill Mazdoor Sangh*. (1950 II LLJ 1247) The Formula was mostly strictly applied by the L.A.T. in its all subsequent awards on bonus. The most controversial part of the Formula concerned the deduction of prior charges, in particular the amount of rehabilitation, for determining the surplus of net profits for distribution of bonus. The workers' organisations felt that the prior charges allowed under the Full Bench Formula were excessive according to their notions of social justice and were thus instrumental in depriving the workers of a larger share in profits.

Though the L.A.T. was abolished on September 1, 1956, (except for purposes of disposing of the pending appeals), the Full Bench Formula has continued to hold its ground. The Formula was adopted throughout the country and generally worked satisfactorily. The Supreme Court, in several cases, generally upheld the Full Bench Bonus Formula. In *State of Mysore v. The Workers of the Kolar Gold Mines* (AIR 1958 SC 923), the Supreme Court said: "...The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare State. *It is on this concept of social justice that the formula in question has been founded and experience in the matter of industrial adjudication shows that, on the whole, the formula has attained a fair amount of success.*<sup>25</sup> It is sure that in industrial adjudication purely technical and legalistic considerations which are apt to lead to rigidity or inflexibility would not always be appropriate; nor is it desirable to allow purely theoretical or academic considerations unrelated to facts to influence industrial adjudication. In its attempt to do social justice, industrial adjudication has to adjust rival claims of the employer and his workmen in fair and just manner and this object can best be achieved by dealing with each problem as it arises on its own facts and circumstances. *Experience has shown that the formula in question is, in its application, elastic enough to meet the requirements of individual cases,*<sup>25</sup> and so we do not think that the appellant has made out case for any addition to the existing categories of prior charges. It is

25. Italics by the author.

clear that the amounts which can be admitted under the said existing categories would have to be determined in the light of the evidence adduced by the employer and having regard to the special requirements of the employer's industry."

In *Associated Cement Companies Ltd., Dwarka and Associated Cement Companies Ltd., Bombay v. Their Workmen* (AIR 1959 SC 967), decided on 5th May, 1959, the Supreme Court observed:

"It is urged that though the Formula purports to recognise the principle of social justice on which labour's claim for bonus is based, it does not accord to the said claim the high priority it deserves... It is doubtful whether, in giving priority to the claim for rehabilitation in the context of the needs of the textile industry with which the Appellate Tribunal was concerned, it was really intended that rehabilitation should be claimed by every industry on theoretical considerations whether or not the said claim was justified by its actual or practical need for rehabilitation."

The Court added:

"It may be conceded that there is some force in some of the arguments urged in support of the plea that the formula should be revised and its priorities should be re-adjusted and redefined; but, on the other hand, we cannot ignore the fact that *on the whole the formula has worked satisfactorily in a large number of industries all over the country. Except for a few cases*,<sup>26</sup> particularly in Bombay, where some of the tribunals have taken the view that, in its rigid form, the formula has become unworkable from the point of view of labour, in a majority of cases industrial disputes arising between employers and their workmen in regard to bonus have been settled by tribunals on the basis of this formula; and it would not be unreasonable or inaccurate to say that *by and large labour's claim for bonus has been fairly and satisfactorily dealt with*.<sup>26</sup> The main source of contest in the working of the formula centres round the industry's claim for rehabilitation; but, as we shall presently point out, if this claim is carefully scrutinised and examined in the light of evidence which the employer has to produce

26. Italics by the author.

in support of his claim, even the settlement of this item would, as it is intended to, invest the tribunal with sufficient discretion to make the working of the formula elastic enough to meet its two-fold object of doing justice both to industry and labour. ...

"If the Legislature feels that the claims for social and economic justice made by labour should be redefined on a clearer basis it can step in and legislate in that behalf. It may also be possible to have the question comprehensively considered by a high-powered commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and all bodies of workmen. The plea for the revision of the formula raises an issue which affects all industries; and before any change is made in it, all industries and their workmen would have to be heard and their pleas carefully considered. It is obvious that while dealing with the present group of appeals it would be difficult, unreasonable and inexpedient to attempt such a task. That is why we think that labour's claim for bonus should be decided by tribunals on the basis of the formula without attempting to revise it. ...

"Whilst we are not prepared to accede to the argument that the formula should be revised, we wish to emphasise that the formula is elastic enough to meet reasonably the claims of the industry and labour for fair play and justice. In its broad features it recognises the claims of the industry and tabulates them under different items as prior charges, and then provides for the distribution of available surplus between the labour, the industry and the shareholders. The items specified in the formula have to be worked out notionally on theoretical grounds; in determining the content of each one of the items it is therefore essential to scrutinise and weigh carefully all the relevant and material facts. If the content of each item is determined objectively in the light of all relevant and material facts, the tribunals would generally find it possible to make reasonable adjustments between the rival claims and provide for a fair distribution of the available surplus. In this sense it is necessary to treat

the formula as elastic and not rigid in working out detailed calculations under it."

In *Indian Hume Pipe Company, Ltd. v. Their Workmen* (1959 II LLJ 357), the Supreme Court said that the Full Bench Formula could not be construed literally. The Supreme Court explained:

"This full bench formula has been working all throughout the country since its enunciation as aforesaid and has been found to be, in the main, fairly satisfactory. It is conducive to the benefit of both labour and capital and even though certain variations have been attempted to be made therein from time to time, the main features thereof have not been substantially departed from. *We feel that a formula which has been thus adopted all throughout the country and has so far worked fairly satisfactorily, should be adhered to*, though there is scope for certain flexibility in the working thereof in accordance with the exigencies of the situation.<sup>27</sup> ...

"In the working of the said formula, however, regard must be had both to the interests of capital and labour. In any given industry there are three interests involved, viz., the shareholders, the company and the workmen<sup>28</sup>... All these interests have, therefore, got to be duly and properly provided for, having regard to the principles of social justice, and once surplus profits available for distribution amongst these respective interests are determined after making due provision for the 'prior charges' as aforesaid, the industrial tribunal adjudicating upon the dispute would have a free hand in the distribution of the same having regard, of course, to the considerations mentioned herein above. But so far as the determination of the surplus profits is concerned, the formula must be adhered to in its essential particulars as otherwise there would be no stability or uniformity in practice in regard to the same."

The Supreme Court, in *Tinnevelly-Tuticorin Electric Supply*

27. Italics by the author.
28. Some workers' organisations contended that under the L.A.T. Full Bench Formula there were only two claimants, while the Supreme Court accepted three sharers.

*Co., Ltd. v. Their Workmen*, held that the L.A.T. was right in applying the Full Bench Formula in adjudicating upon the respondents' claim for bonus. It explained "Just as the problem of wage-structure has to be solved in the case of electricity concerns apart from the provisions of the Act and in the light of the relevant industrial principles, so must the problem of bonus be resolved in the like manner". The Supreme Court added that after the insertion of Cl. (xiii) in 1957 in Para. 17(2)(b) of Sch. VI to the Electricity Supply Act, 1948, there could be no doubt that the amount paid by the employer to his employees by way of bonus would definitely be admissible expenditure under Para. 17(2)(b). The insertion of this clause could be more reasonably explained on the assumption that the legislature had thereby clarified its original intention. (1960 I LLJ 275)

In *New Maneckchowk Spinning and Weaving Company, Ltd. and others v. Textile Labour Association, Ahmedabad* (1961 I LLJ 521), the Supreme Court (Justice Shri P.B. Gajendragadkar, Justice Shri A.K. Sarkar, Justice Shri K. Subba Rao, Justice Shri K.N. Wanchoo, and Justice Shri J.R. Mudholkar) considered the dispute concerning the claim for bonus for 1958 by the workmen engaged in sixty-six textile mills in Ahmedabad. The claim for bonus for the years 1953 to 1957 had been settled under an agreement incorporating a formula which differed from the Full Bench Formula in three material respects: (1) rehabilitation provided in the agreement differed vitally from the rehabilitation as explained in *Associated Cement Companies case* (1959 I LLJ 644); (2) the agreement provided for payment of a minimum bonus even though there might be no available surplus and even though the particular mill might have incurred loss; and (3) while the Full Bench Formula treated a particular year as a self-sufficient unit there was provision in the agreement for "set-off" and "set-on". The Industrial Court had extended the agreement to the year 1958 on the ground that it had worked satisfactorily and fairly between the parties.

Allowing the appeals by special leave preferred by some of the mills, the Supreme Court (Justice K. Subba Rao dissenting) held that *in extending the agreement which departed from the Full Bench Formula in certain vital respects, the Industrial Court had undoubtedly ignored the industrial law as laid down by the Supreme Court and had gone against it*. By extending the

agreement, the tribunal had made possible the payment of a minimum bonus even when there was either insufficient available surplus to pay bonus or no available surplus at all or even actual loss.

The Supreme Court observed:

“There is no doubt that in many matters, like wages, conditions of service, overtime allowance, dearness allowance, gratuity, and so on, industry-cum-region approach has been made by industrial courts in this country, and rightly so. But, there is, in our opinion, no scope for an approach of this kind in the case of bonus, the basic concept of which is that payment depends on surplus of profits available according to some formula in the case of each industrial concern.”

...“Some bonus awards were brought to our notice to show that they were on industry-cum-region basis, namely, *Sugar Mills of Bihar v. Their Workmen* (1951 I LLJ 469), and *Sugar Mills, Uttar Pradesh v. Their Workmen*. (1952 I LLJ 615) These awards related to sugar industry in Uttar Pradesh and in Bihar. As we read these decisions, we do not find real industry-cum-region approach which would result in uniform bonus for all the mills dealt with by these two awards. What we find is that a different formula was worked out for awarding profit bonus linked with production on the basis that there were profits; but when the formula is worked for each mill the bonus would differ from mill to mill according to its production. ...It is true that in the *Bihar case* it was said that the question of bonus could be considered on industry-wise and not on unit-wise basis, but that only meant that one formula was evolved for the whole of Bihar and applied to every mill in that area. That is what exactly the Full Bench formula also has done, for it is the same formula which applies to all industrial concerns all over the country now after the decision of this Court.” ...“the basic concept of profit bonus, as it appears from the judgements of this Court, is that there should be an available surplus of profits in a particular concern in a particular year, to which the bonus relates and on this basic concept there is no scope

for an approach on the basis of industry-cum-region in the matter of bonus in the sense that every mill in a region should pay the same bonus."

The Supreme Court pointed out:

"So far as we can see, there are four types of bonus which have been evolved under the industrial law as laid down by this Court. Firstly, there is what is called a production bonus or incentive wage (see *Titagurh Paper Mills Co., Ltd. v. Its Workmen* 1959 II LLJ 9); the second is bonus as an implied term of contract between the parties (see *Ispahani Ltd., Calcutta v. Ispahani Employees' Union* 1959 II LLJ 4); the third is customary bonus in connexion with some festival (see *Grahams Trading Company v. Their Workmen* 1959 II LLJ 393); and the fourth is profit bonus which was evolved by the Labour Appellate Tribunal in *Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay* (1950 II LLJ 1247), and which has been considered by this Court fully in two cases."

The Supreme Court added that it could not be contended that agreement, when it provided for a minimum bonus irrespective of availability of profits, provided for goodwill bonus (a fifth type) in the interest of industrial peace. "It is enough to say that ... goodwill bonus...presupposes that it is given by the employer out of his own free will without any compulsion by an industrial court."

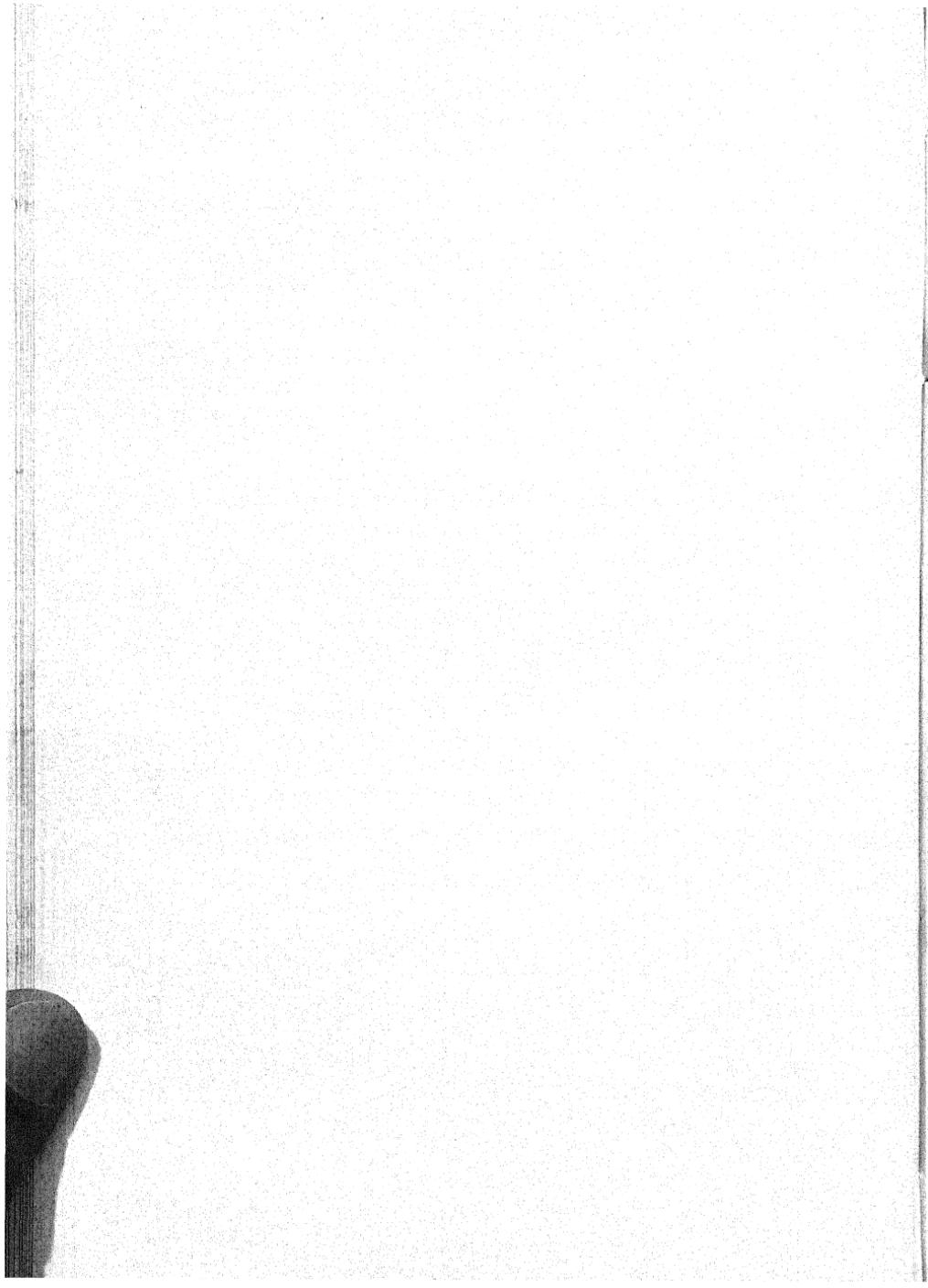
Justice Shri Subba Rao (dissenting) said that it was now established that an Industrial Tribunal could extend an existing agreement or make a new one if, for good reasons, it came to the conclusion that such extension promoted industrial peace. As the impugned agreement was lawful and did not contravene the law laid down by the Supreme Court, the Industrial Court in this case was certainly within its right to extend it for another year. He added that the application of the principles laid down by the Supreme Court in *Muir Mills case* to a bonus claim on industry-cum-region basis would, to some extent, be different from its application to a single unit. The decision in *Associated Cement Companies case* did not purport to prevent the parties from coming to an agreement for determination of bonus on industry-cum-region basis spread over a number of years. Some of the observations in its judgement indicated the consciousness of the

Court that the Formula accepted or the directions given therein could not meet every conceivable situation that might arise in the complicated field of industrial relations. (In accordance with the majority decision, the matter was sent back to the Industrial Court, with a direction, that the Industrial Court should proceed to try the question whether any bonus should be awarded to the employees of the appellant mills on the basis of the Full Bench Formula as interpreted by the Supreme Court in *Associated Cement Companies case*.)

\* \* \*

The approach followed by the Supreme Court with regard to the Full Bench Formula is briefly indicated in Appendix IV. In brief, the Supreme Court held that bonus was the labour's share in profits of a trading year where both the employer and the workmen had contributed to the earning of profits but it would not be relevant to enquire which section of labour had contributed to what share of profits. The Supreme Court ruled that to deduct bonus as a first charge even before meeting the recognised items of prior charges was to put the cart before the horse, which was bound to lead to chaos and industrial unrest. The Supreme Court affirmed the stand taken by the Special Full Bench of the L.A.T. in the case of *U.P. Electric Supply Company Ltd., etc.*, as modified by the L.A.T.'s decision in *Surat Electricity Company case*, that only notional normal depreciation and not initial or additional depreciation should be allowed as a prior charge for determining the available surplus. In *Sree Meenakshi Mills, Ltd. v. Their Workmen* (1958 I LLJ 239), the Supreme Court ruled that only normal depreciation allowed under the income-tax law should be taken into account for purposes of calculating depreciation under the Full Bench Formula. But in *Associated Cement Companies Ltd. v. Its Workmen* (1959 I LLJ 644), the Supreme Court revised its decision in the light of Surat Electricity Company's case and stated that the depreciation amount to be deducted should be the notional normal depreciation. The Supreme Court repelled the plea of the management that income-tax should also be notionally calculated after deducting the notional normal depreciation alone from the gross profits, and not all the statutory depreciations.

The Supreme Court approved of the rate of return on capital and reserves as generally given by the L.A.T. and ruled that there was no fixed and rigid rule about the rate of interest which could be allowed by the tribunals under the Full Bench Formula. Laying down the basic principles to be followed by the tribunals in determining the amount of rehabilitation, the Supreme Court noted that the L.A.T. had in different decisions recognised that it was difficult to lay down any general rule applicable to each and every industry in respect of rehabilitation. With regard to the proportion of the available surplus to be allocated for bonus, the Supreme Court held that for cases where the surplus was not considerable, a workable proposition would be to divide it equally between the employer and the workers but this was not an inflexible rule. The Supreme Court also pointed out that living wage was a relative and expanding concept, and that the distribution of the available surplus between the three claimants—the industry, the shareholders and the workmen—would depend upon various factors pertinent to a case. The Supreme Court generally approved a series of decisions of the L.A.T. on the question whether an undertaking should be treated as a whole or as comprising different distinct units for purposes of payment of bonus. The Supreme Court also opined that income from rent from the quarters built for workmen, light and power supplied, estate revenue and sale of scrap could not be treated as extraneous income.



## **THE AFTERMATH**

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## 1. THE WORKERS' ORGANISATIONS OPPOSE THE L.A.T. FULL BENCH FORMULA

IN PURSUANCE OF the recommendations made by the Standing Labour Committee at its Eighteenth Session (second meeting, March 1960), the Government of India set up on 6th December, 1961, a Bonus Commission with Shri M.R. Meher (President, Industrial Court, Bombay) as Chairman. The independent members of the Commission are Shri M. Govinda Reddy, M.P. and Dr. B.N. Ganguli, the then Director, Delhi School of Economics and at present Pro-Vice-Chancellor, University of Delhi. The workers are represented by Shri S.R. Vasavada (I.N.T.U.C.) and Shri S.A. Dange (A.I.T.U.C.) and the employers by Shri N. Dandekar (representing the private sector) and Shri K.B. Mathur (representing the public sector). The terms of reference of the Commission include: to define the concept of bonus, and recommend principles for its computation and methods of its payment; to determine what should be the "prior charges" in different circumstances and how they should be calculated; to determine conditions under which bonus payments should be made unit-wise, industry-wise, and industry-cum-region-wise; to consider whether there should be lower limits irrespective of losses in particular establishments, and upper limits for distribution in one year and, if so, the manner of carrying forward profits and losses over a prescribed period; and to suggest an appropriate machinery and method for the settlement of bonus disputes.

In the memoranda submitted by them, all the four all-India organisations of the workers urged that the L.A.T. Full Bench Formula on Bonus should be scrapped. The I.N.T.U.C. said, "In spite of the Formula, there were a number of decisions given by the Labour Appellate Tribunal itself outside its own Formula. In *Kanan Devan Hill Produce Co. case*, the Labour Appellate Tribunal awarded a bonus against a profit which would not yield any surplus under its Formula. Another Bench of the Labour Appellate Tribunal linked bonus to production in the case of certain sugar mills in Bihar, and a third Bench of the same Appellate Tribunal blessed the dividend-bonus link in the case of *Buckingham and Carnatic Mills, Madras*, giving the

go-by to its own Formula, even though such dividend-bonus link was entirely opposed to the Labour Appellate Tribunal's Formula itself. Thus, the Formula of the Labour Appellate Tribunal was not always guiding even the Labour Appellate Tribunal. The element of uniformity which was sought by the employers through an appellate forum was not there. Whenever the Formula was sought to be applied, it was found that there were a hundred ways to do it, and where before the Formula, there was only one dispute, namely, the bonus dispute, after the Formula, there arose a hundred disputes over the manner of interpreting and applying the Formula, as the Formula was extremely defective and controversial."..."Thus, the Bonus Formula has become a formula for defining priorities to the employers rather than bonus to workmen. It has shown, how the worker's bonus claim can be pushed downward, even when he is already far below the need-based minimum wage. ...instead of evolving a formula as to how to pay bonus, the Labour Appellate Tribunal has evolved a formula as to how not to pay bonus."

The A.I.T.U.C., opposing the Formula, observed that perhaps no other award had stirred up so much resentment among the workers in the country as the L.A.T. Full Bench Award on Bonus. Roughly 10 per cent of the strikes during the last 10 years were on the question of bonus. The A.I.T.U.C. noted, "The Labour Appellate Tribunal...gave that infamous Formula, which instead of establishing some proper norms for securing bonus to the workers, enabled the employers to appropriate the overwhelming part of the surplus of profits under this or that head. The interpretations and re-interpretations of the Formula by the Supreme Court Judges, in the majority of cases, enriched the employers and deprived the workers of their just dues. On one point of principle alone was the Supreme Court of some help when it held that bonus could be a rightful claim till living wage was attained and thereafter also the right to bonus existed as a share of profits." ... "The tribunals have generally followed this Formula though instances of departure from it are not lacking."

..."In practice every industry refused to give living wage, some refused even fair wage, most exploited the worker on a subsistence wage, which also was not stable. And when demands for bonus to make up the deficits were made, the profits were spirited away with the help of the L.A.T. Formula and the

Supreme Court verdicts under the various heads of 'prior charges'.... "The L.A.T. Formula must be completely destroyed, if there is to be some sort of peace in the industry on the question of bonus..."

The H.M.S. was of the view that the very approach underlying the L.A.T. Formula was highly complicated; the Formula would not lend itself to any simplification and would always leave room for prolonged litigation. The H.M.S. felt that L.A.T. Formula would therefore not provide "any basis for a satisfactory system of computing bonus in future."

The U.T.U.C., objecting to the Full Bench Formula, on principle, stated: "The Full Bench Formula proceeds on the basis that however exploited a labourer may be and whatever may be his wage, his claim for bonus will arise only after giving 6% dividend to the shareholders, paying income-tax to the Government, rehabilitation to the industry and the like. This is fundamentally wrong and smacks of feudal concepts. The modern concept of labour relations demands re-orientation in thought and approach and our whole attempt should be to recognise the fact that the profit earned at the cost of labour by payment of short wages (short of living wages) is really wage robbed and that should be morally and legally paid back first to the workmen in the shape of bonus."

The I.N.T.U.C., the H.M.S. and the U.T.U.C. conceded that bonus was in the nature of a deferred wage till living wage was reached and it would take the character of profit-sharing thereafter. The A.I.T.U.C. thought that bonus was a return to the worker of a part of the surplus value created by him in the form of profits and that it would not be correct to say that on attaining a certain living wage, bonus would cease to be a deferred wage and thenceforward become a share in profits. It added that the concept of deferred wage and profit-sharing would move continuously parallel to each other. The A.I.T.U.C. emphasised that the workers should not be denied a living wage and a rising bonus in the name of planning, as the economy was being planned mostly in the interest of the capitalist class only. The I.N.T.U.C. noted, "Wages being an item of cost, the correct method of arriving at the profit would be after deducting from the gross realisation the entire cost including the living wage due to the workers. But if the

wages at less than the living wage were paid, and only that part of the wages which was paid was deducted from the gross realisations, the unpaid part of the wages due is also contained in the profit." ... "The formula of priorities enunciated by the Labour Appellate Tribunal against the so-called profits, instead of showing us a way of arriving at profit-sharing bonus, really ended up in prescribing a formula for wage-sharing priorities to the employers. In fact, profit-sharing could start only after the worker has been paid his living wage and the possibility of paying a living wage in most industries in our country is extremely remote in the present circumstances." The I.N.T.U.C. added: "The bonus in the case of workmen drawing a living wage is really a profit-sharing bonus and higher the profits, higher would be the share of the workmen concerned." ... "Even after the living wage has been reached there is need for bonus in that it would act as an incentive to enhance loyalty and efficiency of the worker and the prosperity of the plant."

Claiming that bonus as a deferred wage should be the first charge on profits, the I.N.T.U.C suggested a new formula of payment of bonus as a fixed percentage of profits, after deducting from gross profits wear and tear depreciation on a straight-line basis and notional fair remuneration to the managing agents and directors. The I.N.T.U.C. favoured reduction of statutory depreciation to its half and pruning down of the managing agency commission to a notional amount. It felt that when workers were not allowed full neutralisation of the rise in the cost of living by means of dearness allowance and were not getting a fair wage, it was equally unfair to allow full neutralisation of the rise in the cost of replacement of the block of the plant and machinery by way of rehabilitation.

The H.M.S. proposed that only statutory depreciation should be allowed as a prior charge on gross profits for payment of bonus; it held that managing agency commission was not an item of cost but a share in gross profits and the claim of the managing agents should not receive priority over that of the workers. Such a contractual obligation could be "interfered with" where equity and social justice so demanded. Both the A.I.T.U.C. and the U.T.U.C. favoured allowing normal depreciation and reasonable managing agency commission as a prior charge. The H.M.S., the A.I.T.U.C. and the U.T.U.C. opposed any allowance

for rehabilitation on the ground that it had since the birth of the L.A.T. Formula been used by the employers to reduce or deny the workers' claim to bonus and that there was no justification for it when the wages were below the living standard. They urged that the burden of rehabilitation and modernisation of the plant and equipment should be borne by the employers from their own resources. The I.N.T.U.C. and the A.I.T.U.C. thought that six per cent return, free of tax, on paid-up capital was excessive and should be reduced; the H.M.S. felt that a return only on paid-up shares should be allowed (and no return on bonus shares). The I.N.T.U.C., the H.M.S. and the A.I.T.U.C., all the three organisations, opposed any return on general or depreciation reserves used as working capital, on the plea that the reserves were a joint product of labour and capital. They also urged that the amount of bonus should not be taken into consideration for purposes of calculating income-tax. The I.N.T.U.C. added: "To allow interest on depreciation reserves on the ground of its being utilised as working capital would be to allow a double return on that portion of the paid-up capital which is released by depreciation." The A.I.T.U.C. said that depreciation was an item of cost and a return on it would mean a return on an item of cost twice. The A.I.T.U.C. added: "We are surprised to note that the L.A.T. allowed depreciation calculated according to the straight-line method, as in the *Surat Electric Co. case*." The H.M.S. pointed out, "Under the prevailing Formula, the 'available surplus' after meeting all prior charges, is supposed to have three legitimate claims upon it. In addition to the employers and workers, it is said, a share must go to the community. This, H.M.S. submits, is a myth. In fact, the community never gets any share from the available surplus. Its supposed share is invariably appropriated by the employer in addition to the share allotted to him. Actually... all manner of real and imaginary items are provided for as prior charges in the present Formula".

All the workers' organisations generally favoured (1) the determination of bonus on industry-cum-region basis except where it was not practicable, and (2) calculation of bonus on the basis of total emoluments. The I.N.T.U.C. proposed an industry-cum-region basis for cotton textiles, plantations, mining, engineering, motor transport and electricity and power; it even recommended an industry-wise determination of bonus for docks and ports,

airlines, iron and steel, insurance, etc. The I.N.T.U.C. and the U.T.U.C. suggested a minimum bonus of one month's earnings and a maximum of six months'. The I.N.T.U.C. also proposed the creation of bonus equalisation funds in units and pooling of surpluses for the industry in a particular region. The H.M.S., while opposing any maximum ceiling, recommended a minimum "constant and unconditional" bonus of one month's earnings as a prior charge on gross profits (after deducting statutory depreciation) irrespective of the working results of the concern, and additional bonus equal to one-third of the gross profits as calculated for the purpose of charging the managing agency commission under the Companies Act. The H.M.S. held that no distinction should be made, in fixing the percentage of bonus, between capital-intensive and labour-intensive industries. It opposed any "setting off" the minimum bonus paid in a year of loss or inadequate profits, against bonus payable in subsequent years. The A.I.T.U.C. favoured the fixation of a minimum bonus (without specifying any minimum) and opposed any maximum ceiling. It felt that the quantum of bonus to be distributed should be decided by direct collective bargaining, taking into consideration the nature of the industry and the prevailing level of wages. It also proposed a substitute formula, with the following charges on gross profits in the order shown: a minimum bonus of 10 per cent of annual earnings; normal depreciation; an additional bonus equal to 10 per cent of the annual earnings; taxation; a third instalment of bonus equivalent to 10 per cent of annual earnings; then 6 per cent return on paid-up capital and 2 per cent return on working capital; and the balance to be shared between the workers and the industry. All the four organisations of the workers emphasised that customary bonus should not be taken into account in determining the quantum of bonus to be paid from the surplus profits. They also urged that, in view of the unreliability of the balance-sheets and profit and loss accounts, the workers' representatives should have a right to challenge the various items in them on grounds of justifiability or reasonableness (H.M.S.); to receive detailed information they wanted, without making out a *prima facie* case in advance to show the incorrectness of accounts (A.I.T.U.C.); and to satisfy themselves by an inspection of accounts (I.N.T.U.C.).

All the four organisations agreed that the existing machinery

for adjudication of the bonus disputes was dilatory and expensive. The I.N.T.U.C. favoured voluntary arbitration and tripartite machinery on industry-cum-region basis for settlement of bonus disputes; the I.N.T.U.C. also suggested the constitution of a tripartite body with representatives of the employers, Government and the four central trade union organisations. The A.I.T.U.C. thought that the solution lay in collective bargaining between unions and managements and if the tribunals had to be brought in at some stages, the procedure must not be costly and time-limits should be set for disposal of cases. The H.M.S. suggested the constitution of special bonus tribunals which could be approached directly by trade unions.

The I.N.T.U.C., the A.I.T.U.C. and the H.M.S. complained that the new bonus formula<sup>1</sup> given by the Wage Board on Sugar had led to a reduction in the quantum of bonus granted to the workers in the sugar industry and created discontent among them. The I.N.T.U.C. and the A.I.T.U.C. favoured a change-over to a profit-sharing bonus scheme on the lines indicated by them for the industries in general. The H.M.S., on the other hand, felt that as the new formula had been in use so far only for one year, it was premature to judge how the formula was working.

The Indian National Sugar Mills Workers' Federation, in its memorandum to the Bonus Commission, said that the new bonus formula, given by the Wage Board on Sugar, had

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1. The Wage Board on Sugar, set up in December 1959, had, in its final Report submitted in 1960, recommended a new bonus formula, with bonus of 20 to 22 per cent of the net profits calculated on the basis of regional costs as adjusted to the duration of season and the percentage of sugar recovery attained by the individual mills. Prior to that bonus in the sugar industry in the North was paid, not on the basis of available surplus after deducting prior charges from gross profits, but by a notional amount roughly estimated on the basis of the quantity of sugar manufactured and other operating data. This earlier practice had been endorsed by the L.A.T. in the appeals arising out of bonus awards for the years 1948-49 and 1949-50. On the other hand the sugar industry in Maharashtra and the South regions was following the lines of the L.A.T. Full Bench Formula. Referring to the Full Bench Formula, the Wage Board on Sugar had said, "While it is true that theoretically speaking the Formula laid down by the L.A.T. in *Rashtriya Mill Mazdoor Sangh case* has many points to commend itself, but in practice it has often led to litigation and consequential delays in the payment of bonus."

woefully disappointed the workers. It stressed that balance-sheets could never be the satisfactory basis for bonus calculations for the sugar industry, but they were being used for bonus formula as given by the Wage Board. It added, "...the system followed by the Labour Appellate Tribunal for bonus calculations in cases of U.P. and Bihar Sugar Mills...forms perhaps the only satisfactory basis for the estimate of residuary surplus."

## 2. THE EMPLOYERS' STAND BEFORE THE BONUS COMMISSION

The Council of Indian Employers, a joint body constituted by the Employers' Federation of India and the All-India Organisation of Industrial Employers in 1956, in its memorandum to the Bonus Commission pointed out, "Suffice it to say that neither the Full Bench Formula of the Labour Appellate Tribunal laying down prior charges nor the clarification thereof by the Supreme Court of India has eliminated industrial disputes on this count. On the other hand, the concept of bonus has become increasingly clouded by the conflicting views and interpretations put on it by various parties to this controversy. It is a well-known fact that no single issue has been so much responsible for industrial strife as the demand for bonus..."

The Council thought, "Bonus can best be conceived of as payment made in addition to normal wages or salary to employees for their direct contribution to the efficiency or prosperity of the undertakings, such payment depending upon the different circumstances prevailing in different industries. This concept is a practical one and permits a flexible approach to evolve formulae, with even different bases, after taking into account the practices and preferences of employers and workers in each industry." The Council strongly contested the stand taken by the I.N.T.U.C. and other workers' organisations that bonus was a deferred wage till the living wage was reached and as such should be the first charge on profits. The Council pointed out that as observed by the Supreme Court the living wage had an "idealistic and often expanding character". It emphasised that the long-term interest of the workers was bound up with the stability and expansion of industrial undertakings and the conflict between the claims of labour and capital in the short run

had therefore to be resolved in the broader perspective of the working class as a whole rather than by treating the claims of industrial labour in isolation. The Council urged that the need for developing competitive strength to withstand the challenge of the international market and ploughing back sufficient profits to rehabilitate and modernise plants and equipment and to start new industries must be kept in mind in deciding upon the theory put forward by the I.N.T.U.C. The wages paid to the workers in most of the organised industries represented a fair return for the work done and the labour had in principle no claim to a share in profits.

The Council added, "If the theory propounded by the I.N.T.U.C. is to be accepted, it would mean that till such time as a living wage is reached the entire profit or a large portion of that profit will have to be paid over to labour, irrespective of the legitimate claim of the State by way of taxes, of the industry by way of maintenance and rehabilitation of its machinery, and of capital by way of fair return". The Council favoured rewarding of the labour by fair wages and production bonuses—direct incentives to individual workers. Arguing that bonus had become a source of continuous industrial strife and had stimulated inter-union rivalries, the Council and the All-India Manufacturers' Organisation suggested its replacement by a system of bonus related to productivity, within a period of two years but not exceeding 5 years. They added that in the interim period the L.A.T. Formula might be continued in an improved and simplified form. The Ahmedabad Millowners' Association also expressed similar views. However, the Millowners' Association, Bombay, contended that the living wage was a 'fluctuating concept', and that it would be safer to divest the concept of bonus of the wool it had gathered during the post-war years and to affirm categorically that bonus was profit-sharing. The surplus, left after meeting prior charges, should be "shared in agreed proportions, considering the claims of the industry, workers and shareholders." The Millowners' Association, Bombay, added that bonus should not be linked to production. Both the Ahmedabad Millowners' Association and the Millowners' Association, Bombay, urged for the continuance of the Full Bench Formula, as interpreted by the Supreme Court. The former said, "The Full Bench Formula incorporates sound principles which should

be adopted in settlements of employees' claim for bonus."..."The ...Formula...has so far worked fairly satisfactorily though it has not always fully satisfied either the employers or the employees. If it is revised without changing its main features to fill in certain lacunae, it will be a perfect instrument for deciding the bonus disputes in future."

With regard to prior charges, the Council of Indian Employers and All-India Manufacturers' Organisation favoured a flexible approach which would allow for the varying requirements of different industrial undertakings. The All-India Manufacturers' Organisation pleaded for depreciation as permissible under the income-tax law (and not a notional amount), some allowance for expansion of production as part of rehabilitation and a higher return (8 to 10 per cent) on paid-up capital as well as reserves. The Millowners' Associations of Ahmedabad and Bombay expressed themselves in support of prior charges as admissible under the Full Bench Formula, with an element of elasticity for a larger provision of rehabilitation. The Ahmedabad Millowners' Association favoured 10 per cent return on the entire capital employed (paid-up capital as well as depreciation reserves utilised as working capital). The Millowners' Association, Bombay, while urging a return of 10 per cent on paid-up capital and 7.5 per cent on reserves, refuted that reserves were a joint product of labour and capital. It added, "...reserves are the creation of the management policy through enforced abstention on the part of the capital." To set the controversy regarding rehabilitation at rest, the Millowners' Association, Bombay, further proposed that a stipulated percentage of the original value of the block should be earmarked as rehabilitation allowance for the trading year in inverse relation to the depreciation earned thereon. It added that any shortfall in the rehabilitation allowance for a particular year due to the payment of bonus should be permitted to be carried forward to the next and the succeeding years.

The Council of Indian Employers thought that a flexible approach was necessary to the issue of determining bonus on industry-wise or unit-wise basis. It noted, "If an industry, having regard to its peculiar set-up and for reasons of continuity, wishes to have arrangements for a profit bonus by mutual agreement with labour, it should not be compelled to fit into a rigid national formula."

The All-India Manufacturers' Organisation and the Ahmedabad Millowners' Association stated that bonus should be determined unit-wise, unless voluntarily agreed to by individual units otherwise. The A.I.M.O. totally opposed the idea of industry-wise determination of bonus. The Council of Indian Employers, the All-India Manufacturers' Organisation and the Millowners' Association, Bombay, urged a maximum ceiling of 25 per cent of annual basic earnings on bonus. The Ahmedabad Millowners' Association said that after deducting the prior charges the available surplus should be distributed equally between the industry, the shareholders and the labour. It explained, "This would not only be a satisfactory mode of determining the part of each of the three in the balance of surplus profit but will also be fully in consonance with the idea of social justice". The Millowners' Association, Bombay, pointed out that it was willing to consider a minimum bonus of 5 per cent of the basic wages under a scheme of "set-on" and "set-off", provided the shortfall in meeting prior charges, if any, could be carried forward to the succeeding year and treated as a prior charge in that year. It added that its advocacy of minimum bonus did not "conflict with the dictum of 'no bonus if there is no available surplus,'" and that the minimum bonus was a sort of advance payment to be 'set off' against bonus payable in subsequent years when due to good profits higher bonuses would be payable. Taking bad and good years into account, bonus, by and large, would have been paid commensurate with the size of the available surplus over a period of years.

The Ahmedabad Millowners' Association and the Millowners' Association, Bombay, both were of the opinion that labour should be allowed to challenge the veracity of audited accounts only to the extent permitted by the Supreme Court in its decisions.

As regards improvement in the existing machinery for settlement of bonus disputes, the All-India Manufacturers' Organisation favoured arbitration in cases of joint submission by the parties, and adjudication if necessary, with a right to appeal, after the issues had been scrutinised by the State Government concerned. The Ahmedabad Millowners' Association and the Millowners' Association, Bombay, thought that the existing machinery should continue as long as the Full Bench Formula was applied to bonus disputes.

The I.N.T.U.C., at its Fourteenth Session held at Jaipur (May 1963), passed a Resolution on Bonus Commission, endorsing the views expressed by it in its memorandum to the Bonus Commission. The I.N.T.U.C. noted that the Full Bench Formula was never capable of solving bonus disputes satisfactorily. On the other hand, it had proved itself to be a fertile source of controversies. It had increased litigation, and the case law under the Formula had since so developed that practically any position taken could be found to be supported by some authority. There was more confusion than ever before, with the result that when managements wanted to fight, they would use the Formula, and when they wanted to settle, they would give the go-bye to the Formula. The I.N.T.U.C. added that any attempt at toying with the idea of perpetuating the L.A.T. Formula, with some slight tinkering here and there, would be found to be wholly impracticable. It recommended, "Bonus should be linked in terms of percentage of gross profits properly defined. Such gross profits should be the profits arrived at before taxation, but after providing for a remuneration to management and actual wear and tear depreciation of the plant and machinery." Further, in order that the workers' representatives might satisfy themselves that the gross profits had been correctly arrived at, it was necessary to give them the right of inspection of accounts. The I.N.T.U.C. added that the Bonus Commission should recommend that unions should have access to accounts for purposes of inspection "so that apart from the financial satisfaction, the new formula could give psychological satisfaction as well". It proposed that under any new formula, it would be necessary to provide for a minimum bonus regardless of profits or losses, and because of its insistence on a floor level of bonus the I.N.T.U.C. would also accept a ceiling on bonus regardless of the size of the profits.

The I.N.T.U.C. also passed a Resolution urging for the nationalisation of audit of all commercial and industrial undertakings. In the light of the fact that the recommendations of the Wage Boards, which had so far reported, had been unanimous and had been mostly accepted by the employers, the I.N.T.U.C., by another Resolution, called upon the Government of India to consider the desirability of setting up tripartite tribunals and labour courts.

**REVIEW  
AND  
COMMENTS**

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THE CASE STUDY attempts to explore how far in India, which is an underdeveloped country with a democratic form of government and has embarked upon plans of accelerated economic development, the formulation of public policies is a continuous balancing and legitimatisation of the conflicting pressures of different interest groups, by the Government, *in the larger interests of the nation.*

The case study also shows how complex is the making of public policies concerning a basic problem which persists over a period of time; how difficult it is to take into account, in any policy decision, all the variables relevant to a problem, and to balance the conflicting considerations (e.g., the requirements of uniformity in basic principles to govern industrial awards versus the need for speed in arriving at final decisions in the adjudication of labour disputes); how the later decisions are conditioned by the earlier decisions; how a change in the nature or weight of variables affects the later decisions; how a multiplicity of factors influence policy-making; and how the personalities and beliefs and values of the decision-makers affect the nature and content of policy decisions.

The case study further illustrates that there is no finality to decisions concerning public policies; that very often these decisions must necessarily be taken on limited data which are available; that the validity of a decision must be judged in the context of the particular situation in which it is taken; that the process of policy formulation and the contents of policy interact on each other; that empirical data can be of considerable help in improving the decision-making process; and that a policy decision has necessarily to be related to a wider setting than just the immediate problem which it attempts to solve.

#### THE MACHINERY FOR THE SETTLEMENT OF INDUSTRIAL DISPUTES

The three Government decisions concerning the creation, abolition and 'non-revival' of the Labour Appellate Tribunal have necessarily to be viewed in the overall perspective of the Government's policies concerning compulsory adjudication, mutual

negotiation and voluntary arbitration of industrial disputes, so as to bring out the interaction between the two. The policy of compulsory adjudication, a war-time legacy, was enacted into law at the initiative of the Congress Government in 1947, notwithstanding the opposition of the national organisations of the workers in existence at that time (i.e., the All-India Trade Union Congress and the Indian Federation of Labour). It was in consonance with the thinking within the Indian National Congress during the preceding decade. In 1950, when the Labour Appellate Tribunal was set up, the Hind Mazdoor Sabha (which had been formed by a group of labour leaders belonging to the Socialist Party and into which the Indian Federation of Labour had merged) and the A.I.T.U.C. were opposed to the principle of compulsory adjudication of industrial disputes. But the newly-formed Indian National Trade Union Congress, which was closely identified with the philosophy and objectives of the Indian National Congress, was in its favour. By the middle of 1952, the H.M.S. and the A.I.T.U.C. had also come to believe in the merits of compulsory adjudication as a measure of the last resort, if direct negotiations and collective bargaining were to fail; and the United Trades Union Congress also supported it. This change in their attitude was explained by the gains in terms of minimum basic wages, higher dearness allowance and sizeable bonus awarded to the workers in some of the more important organised industries, by the industrial tribunals set up after 1947. As regards the employers' organisations, they thought that the method of compulsory adjudication should be used only in cases of emergency and for public utility services.

The policy of compulsory adjudication of industrial disputes was supported by the then Union Minister of Labour, Shri Jagjivan Ram, on the ground of the weak bargaining power of trade unions and the need to avoid hardship to the community by ensuring continuous production uninterrupted by any work stoppages. Even Shri V.V. Giri had conceded in 1939 in his note of dissent to the report of the Labour Sub-Committee of the National Planning Committee that if Government were to intervene as a last resort, the method of compulsory arbitration would be useful to the workers. With the advent of planning in 1951, the policy of compulsory adjudication of disputes found

further support. The First Five Year Plan (1951-56) emphasised that strikes and lock-outs had no place in an economy organised for planned production and distribution and that it was incumbent on the State to arm itself with legal powers to refer disputes to arbitration or adjudication if efforts to reach an agreement by other means were to fail.

During May 1952-August 1954, when Shri Giri was the Union Minister of Labour, he attempted to evolve a new labour relations policy—one of direct negotiation and settlement between the employers and the workers, as against that of compulsory adjudication, considering that the latter always led to bitterness and litigious spirit and had stood in the way of the trade unions developing inner strength and vigour. Shri Giri's effort, however, did not materially succeed and he conceded in January 1954 that conditions were not as yet favourable for a change in the basic industrial relations policy, though his own belief in the new policy remained unaltered.

At the meeting held in September 1955 of the Industrial Relations Sub-Committee of the Panel on Labour for the Second Five Year Plan, the I.N.T.U.C. and the H.M.S. were in favour of compulsory adjudication; and the A.I.T.U.C. was against it. The employers' representatives stated that it would not be practicable to dispense with compulsory adjudication for many years to come. While the general policy of compulsory adjudication continued, the Second Five Year Plan (1956-61) underlined the importance of mutual agreement and voluntary arbitration and after the assumption of the office of the Minister of Labour by Shri Gulzari Lal Nanda in April 1957 the emphasis shifted towards a policy of settlement of disputes through mutual negotiation, mediation and voluntary arbitration, and avoidance of adjudication except in certain specified types of cases. The new policy found expression in the ratification of a Code of Discipline by the all-India organisations of the workers and the employers in May 1958; and the establishment of tripartite wage boards (which made unanimous recommendations) and of joint councils of management. The Third Five Year Plan (1961-66) emphasises the need for a positive orientation of industrial relations policy, based on moral rather than legal sanctions.

## THE ESTABLISHMENT OF THE L.A.T.

The establishment of the Labour Appellate Tribunal in 1950 was a logical corollary to the policy of compulsory adjudication. The Appellate Tribunal was set up on the persistent demand of the employers' associations, as also from a realisation within the Government itself, that it was necessary to achieve some uniformity in the divergent and conflicting awards of industrial tribunals, which tended to create industrial unrest and instability in the country. The workers' organisations and some of the State Governments felt that interposing an additional level between the industrial tribunals and the regular higher judiciary would lead to delays. The workers' organisations feared that the employers would prefer appeals in large numbers to the appellate body and the workers would not, due to their weak financial position, be able to fight out the appeals. The workers' organisations also believed that they could expect more favourable terms from industrial tribunals than from an appellate tribunal, as the former were more conversant with local conditions. However, considerations of public interest in terms of industrial harmony and growth weighed much more with the Government. The establishment of the Labour Appellate Tribunal in 1950, viewed in the broader perspective, was a natural response to the need for a measure of uniformity of underlying principles and 'norms' to govern the awards of the different industrial tribunals, for maintaining industrial peace and stability in the interest of uninterrupted production. The Government was fully seized of the problem, though it did not conduct any comprehensive enquiry to assess the extent of divergencies in industrial awards and their impact on industrial peace and stability.

## THE DECISION TO ABOLISH THE L.A.T.

*The Opposition of the Workers' Organisations*

The Labour Appellate Tribunal was abolished in September 1956 on the overwhelming and persistent demand of the more important workers' national organisations. The leadership in voicing the opposition was taken by the I.N.T.U.C. It was opposed to the L.A.T. even at the time of its establishment and

subsequently (during 1951-1956) it persistently urged the Government to abolish of the L.A.T. In 1955, the All-India Trade Union Congress became more vociferous and vehement in its opposition to the L.A.T. and launched a campaign for the boycott of the L.A.T. by the trade unions. However, the pressure on the Government for the abolition of the L.A.T. was, it appears, exerted mostly through the I.N.T.U.C., one of whose former Presidents was the Union Minister of Labour during September 1954-April 1957.

The main reasons for the opposition of the trade unions to the L.A.T. was the preferring of a large number of appeals to the L.A.T. by the employers, the inordinate delay in their disposal by the L.A.T., with the consequent prolonged litigation and hardship. The workers, with their weak staying power, could ill afford such litigation, while the employers were financially in a much stronger position in the matter of appeals. The workers' organisations contended that appeals and prolonged litigation, in turn, retarded trade union activity (i.e., direct action) and weakened the unions. Prolonged litigation also left behind a feeling of bitterness and mutual incrimination which was inimical to the growth of industrial peace.

The I.N.T.U.C. denied that its demand for the abolition of the L.A.T. was prompted by the consideration that some of the L.A.T. awards had been adverse to labour; the I.N.T.U.C. was opposed to the L.A.T. because it had been "born in fetters" and was not progressive in its outlook. The I.N.T.U.C. complained that the members of the L.A.T., who were retired High Court Judges, had generally no practical knowledge of industrial relations, followed too legalistic an approach and did not pay adequate attention to considerations of social justice in deciding the appeals. Here, the I.N.T.U.C.'s main target of attack was the Full Bench Formula. The I.N.T.U.C. felt that the priorities in the Formula were heavily weighed in favour of the employers and had resulted in depriving the workers of their rightful share (in the form of bonus) in the larger profits of the industry. The I.N.T.U.C. strongly criticised the Full Bench Formula, for "excessive" rehabilitation amount and the return on reserves used as working capital, allowed under it as "prior charges" to be deducted before determining the labour's share in net profits. The issue of rehabilitation led to a

heated controversy; even the L.A.T. admitted that after the Formula the employers had become more "rehabilitation conscious." The I.N.T.U.C. was also critical of the greater reliance placed by the L.A.T. on the statements of accounts submitted by the employers than on the information supplied by the workers' representatives. While in some cases the I.N.T.U.C. representatives, appearing in the hearings, were able to wrest quite a large slice of available surplus as bonus from the L.A.T., the latter in several cases either negated the bonus awarded by industrial tribunals or reduced its quantum, by insisting strictly on the deduction of all the prior charges allowed by the Full Bench Formula. In several awards, the L.A.T. emphasised that the bonus awarded should not be so excessive as to create problems in the vicinity. The general approach of the L.A.T. was that bonus should not normally exceed 3 to 4 months' basic wages or a little more, notwithstanding the availability of a large surplus.

The opposition of the I.N.T.U.C. to the Full Bench Formula also arose from the determination of bonus under it on the basis of the trading results of an undertaking, and not of the industry as a whole. This, the I.N.T.U.C. pointed out, had led to dissatisfaction among the workers in places where bonus used to be paid earlier on industry-cum-region basis, regardless of the trading results of the individual units. Arguing the case for payment of bonus at a uniform rate in an industry as a whole, the I.N.T.U.C. contended that when prices, wages and conditions of work were standardised in an industry, it would be unfair to deprive the workers in a loss-making mill of bonus (which was in the nature of a deferred wage), if the loss was due to the inefficiency of the management or if the management had deliberately shown a loss in its statement of accounts. The stand taken up by the I.N.T.U.C. was borne out by the industrial unrest and strikes which followed in the wake of the conclusion, by the Rashtriya Mill Mazdoor Sangh, Bombay, of the Bonus Agreement for 1952-57, which allowed for prior charges as under the Full Bench Formula and also provided for a minimum and a maximum bonus to the workers in the textile mills in Bombay.

The I.N.T.U.C., on the whole, felt that the Full Bench Formula was "unjust, impracticable and self-contradictory". It pointed out that while before the Formula there was only one

dispute, i.e., the bonus dispute, after the Formula, there arose a hundred disputes over the manner of interpreting and applying it. The I.N.T.U.C. also complained that the L.A.T. had failed to achieve uniformity in its awards or set any 'norms'; it had only created complexity and confusion and in several cases the L.A.T. Benches had given divergent decisions.

Some other important reasons for the I.N.T.U.C.'s opposition to the L.A.T. concerned the refusal by the latter to include dearness allowance (which would neutralise the rise in the cost of living cent per cent) in the minimum wage to be allowed irrespective of the capacity of the industry to pay, and the exclusion of the supervisory staff from the definition of "workman" under the Industrial Disputes Act, 1947.

The All-India Trade Union Congress was much more critical of the L.A.T. awards. It openly alleged that the L.A.T. Judges were "pro-employer and anti-labour, reactionary...and disastrous to the just rights of the working class for a better and fair deal". It added that the divergencies in the L.A.T. awards had led to "a state of utter anarchy and chaos in the domain of industrial relations". The Full Bench Formula was greatly biased against the workers and the heavy expenses of appeals and the long delays in their disposal by the L.A.T. acted to the detriment of the workers' interests.

The United Trades Union Congress was concerned over the anti-labour awards of the L.A.T., but it was not opposed to its continuance, if time-limits were fixed for the disposal of appeals. The Hind Mazdoor Sabha stood for the abolition of the L.A.T., but it favoured allowing appeals on substantial questions of law to the appropriate High Court.

The opposition of the workers' organisations to the L.A.T. also arose from the expectation that the industrial tribunals were more favourable towards the workers than the Appellate Tribunal. This expectation, it was contended by the employers' representatives, was partly derived from the influence which could be brought to bear upon the members of the industrial tribunals (whose tenure was for a period of one year at a time) through the State Government representing the political party with which one of the all-India workers' organisations was closely associated. The A.I.T.U.C. complained that the L.A.T. awards had even led to the lowering of labour standards in

industrially more advanced States, in the interest of uniformity.

The opposition of the workers' organisations to the L.A.T. was essentially a protest against the denial to the workers of what they thought was their due share in the profits of industry. As an interest group, their efforts were directed towards attaining first a minimum wage, and then a fair wage, on the way to a living wage. The opposition of the workers' organisations would be better understood if it is kept in view that the L.A.T.'s overall approach was to grant the minimum basic wage, denying the full increase in dearness allowance to neutralise cent per cent the rise in cost of living, thereby obstructing the efforts of the workers to attain a fair wage with the help of bonus. Bonus was conceived by the L.A.T. as a temporary device to fill the gap between the minimum wage and the living wage, and though at times the L.A.T. did give a substantial portion of the available surplus as bonus, the workers' organisations all along felt that the scheme of 'prior charges', to be deducted for the determination of this surplus, tended to deprive the workers of a larger share. Behind this protest was their basic conviction that bonus, being a deferred wage under the prevailing conditions, should have been treated as a prior charge on profits than interest on capital and reserves, rehabilitation, etc.

#### *The Employers' Stand for the Retention of the L.A.T.*

The all-India organisations of employers were all for retention of the L.A.T., which, they opined, had despite some divergencies in its decisions brought considerable uniformity in the basic principles underlying industrial awards and was building up a case law on industrial relations. They argued that the Appellate Tribunal was a necessary complement to the policy of compulsory adjudication and the system of industrial tribunals, and that its continuance was all the more necessary because of the low calibre of the judicial personnel manning the industrial tribunals. The L.A.T.'s real role was one of the corrector of the hasty and diverse decisions of the lower tribunals. The employers' organisations felt that uniformity of norms and standards with regard to bonus, wages, retrenchment, dismissal, etc., was essential for maintaining industrial peace, production and stability. They opposed bonus as a form of profit-sharing and, as an interest group, they feared that without the right to

appeal to a higher tribunal, there was always the danger that the profits of the industry would be distributed away by the industrial tribunals, to the disadvantage of the industry and the shareholders. The employers' representatives denied that they wanted the L.A.T. to continue because some of its awards had gone in favour of employers.

The employers' organisations also urged that both the industrial tribunals and the Appellate Tribunal should form part of the regular judiciary, and should be removed from the jurisdiction of the State Departments of Labour and the Union Ministry of Labour and placed under the Legal Department and the Ministry of Law respectively, so as to eliminate the influence of the Executive in the making of the industrial awards. The employers' associations opposed the appointment to the industrial tribunals of superannuated judges who had to look up to the Executive for the renewal of their tenure of service. The workers' organisations opined that the judges of the existing tribunals, who were trained and brought up in normal judicial climate, were bound to take too juristic and narrow a view of industrial relations, and emphasised that the members of the industrial tribunals should include 'non-judicial' persons of integrity, knowledgeable in labour matters and conscious of the role of social justice in industrial adjudication. The employers' representatives argued for the appointment of a chartered accountant as one of the members of the tribunal. However, both the employers' and the workers' organisations were agreed that the members of the existing tribunals did not possess adequate knowledge of and insight into industrial matters, and both favoured the creation of a cadre of judges fully conversant with industrial and labour conditions.

#### *The Question of Uniformity in Industrial Awards*

On the question whether the L.A.T. did achieve the object for which it was set up, i.e., uniformity in industrial awards, the Government conceded that it had succeeded to some extent (vide the statement of Shri Khandubhai K. Desai, the then Minister of Labour, in the Lok Sabha on July 20th, 1955, and the remarks of Shri Gulzari Lal Nanda, Minister of Labour and Employment, at the Eighteenth Session of the Standing Labour Committee, held in January 1960). The analysis of about 200

important L.A.T. awards, given in the main narrative of the case study and the Appendices, indicates a general consistency of approach in the L.A.T.'s decisions. It also shows divergencies in certain judgements such as those concerning the grant of bonus without the availability of net surplus (the well-known *Muir Mills case* which went up to the Supreme Court); linking of bonus to dividend in *B. & C. Mills case*, and to production and its determination on an industry-wise basis in the cases of *Sugar Mills of Bihar* and *Sugar Mills of U.P.*; variations in the proportion of the available surplus awarded as bonus; grant of bonus in electrical undertakings; allowance for normal, initial and additional depreciation in determining the available surplus; calculation of income-tax after deducting the payable bonus from gross profits; interest on investments in shares of other concerns to be treated as "extraneous profits" for purposes of the 'available surplus'; calculation of the rehabilitation amount on the original or depreciated value of the block of machinery; and reinstatement after participation in an illegal strike. The reader may like to judge for himself how far were these divergencies really significant and how far were they the inevitable 'by-product' of the process of evolving a code of uniform principles on matters like bonus, basic wages, dearness allowance, etc.

During the hearing on the dispute concerning basic wages and dearness allowance between the *Bombay Millowners' Association* and *Rashtriya Mill Mazdoor Sangh*, the workers' representative contended that the L.A.T. had already accepted that the capacity of the industry to pay was immaterial in deciding upon the minimum *total* wage but the L.A.T. pointed out that it had never agreed to such a proposition. The principle enunciated by the L.A.T., in its famous award in the *Buckingham and Carnatic Mills case*, that the capacity of the industry to pay was not relevant, concerned the minimum basic wage only, and not to total minimum emoluments (including dearness allowance). Again, the Research Service of the I.N.T.U.C. in an article in the *Indian Worker*, published in March 1954, complained that while in the sugar industry in U.P. the loss-making mills had not been exempted from paying bonus, those in the cotton textiles in Bombay had been so exempted. The L.A.T. award in the former case, had, however, provided for "a particular unit to escape liability by positively proving loss". In a number of awards

the L.A.T. emphasised that the question of bonus had to be considered objectively, not only from the point of view of the two parties—labour and capital—but also from the interest of the community as a whole. The L.A.T. reiterated several times that the Full Bench Formula was designed to do justice both to the industry and the labour. The scheme of prior charges was included in the Formula to ensure the continuance and stability of the industry and to protect the interests of the shareholders. The L.A.T. also emphasised that in evolving the Formula the Full Bench was moved by a desire to give fair deal to labour. It added that the Formula contained an element of flexibility and was not the last word on the issue of bonus. The L.A.T., all the same, made it clear that the Formula could not be deviated from by the tribunals.

#### *Discussion in Parliament*

As regards interest shown by Parliament, some of its Members, associated with the workers' organisations, took advantage of the debate on the Demands for Grants of the Ministry of Labour for the years 1951-52, 1954-55 and 1955-56 to urge for the abolition of the L.A.T. Some of them also asked, at different times, certain questions about the number of appeals pending before the L.A.T. Others strongly protested, during the debate in August 1955 on the Industrial Disputes (Appellate Tribunal) Amendment Bill, against the delay on the part of the Government in bringing forward legislation to abolish the L.A.T. [The Amendment Bill was enacted into law and it replaced the Ordinance promulgated by the Government in June 1955 to expedite the disposal of applications pending with the L.A.T.]

During discussions in Parliament in July-August 1956 on the Bill providing for the abolition of the L.A.T., it was pointed out by certain Members that the L.A.T. Judges, who had been re-employed after retirement, in particular those who were "senile", were too much conditioned by their past judicial career to give adequate consideration to the modern concept of social justice, in giving their judgements. A point was made by some Members that the large number of appeals before the L.A.T. was due to the fact that the judges of the lower tribunals were not of the requisite calibre and that the problem of delays in the disposal of appeals by the L.A.T. could be resolved by increasing the

number of its judges.

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### *The L.A.T. and the Government*

The question of the abolition of the L.A.T. was viewed in the Government in the broader context of the Government's labour relations policies and the personal values and goals of the Labour Minister at the helm of affairs in the Union Ministry of Labour and Employment at the time. Shri Jagjivan Ram, Minister of Labour during 1946-1952, (who believed in statutory regulation of industrial relations and in compulsory adjudication as a principle to ensure uninterrupted production), said in Parliament in March 1951 that the L.A.T. was doing some useful work in the interest both of the industry and the labour and it was difficult to scrap it.

Shri V.V. Giri found the overwhelming demand of the workers' organisations for the abolition of the L.A.T. in keeping with his new policy of promoting "unstructured" or "free" collective bargaining. The employers' representatives at the Nainital (Twelfth) Session of the Indian Labour Conference were for the continuance of the L.A.T. and the representatives of the more important of the workers' organisations stood for its abolition as a united force; and Shri Giri, as the Chairman of the Conference, concluded that there was "general agreement that the Appellate Tribunal should be abolished". It was during Shri Giri's regime that the Joint Consultative Board of Labour and Industry at its meeting held in July 1954 decided that the L.A.T. should be abolished and that the existing system of tribunals should be replaced by a three-tier adjudication machinery, without any provision for appeal. The representatives of the employers' organisations said that they would agree (subject to confirmation by their respective organisations) to the abolition of the L.A.T. on the condition that the Industrial and National Tribunals under the new three-tier machinery would be manned by sitting High Court Judges. The workers' representatives at the meeting insisted that unless the employers would agree to the abolition of the L.A.T., the workers' organisations would not accept to the proposed amendment of Section 33 of the Industrial Disputes Act to allow the employers to take disciplinary action against the workmen during the pendency of conciliation or adjudication proceedings. Later

on, some "spokesmen" of the employers made it clear that the employers' representatives at the meeting of the Board had tentatively agreed to the abolition of the L.A.T. when told by the Chairman of the Joint Consultative Board, Shri G.L. Nanda, the then Minister of Planning, that the Government had already made up its mind to abolish the Appellate Tribunal. Shri Nanda had been responsible for the industrial relations policy as enunciated in the First Five Year Plan. Stressing that the employer-employee relations had to be conceived as a partnership in a constructive endeavour to promote the satisfaction of the economic needs of the community in the best possible manner, the First Plan stated that there should be no appeal from the decisions of industrial courts and tribunals (barring very exceptional cases of perverse decisions or decisions against the principles of natural justice), and that legal technicalities and formalities of adjudication procedure should be reduced to the minimum.

Shri Giri was succeeded in August 1954 by Shri Khandubhai K. Desai as the Union Minister of Labour who as the President of the I.N.T.U.C. during 1950 and 1951 had time and again urged for the abolition of the L.A.T. His coming to the helm of affairs in the Ministry of Labour, as the Annual Report for 1953-54 of the I.N.T.U.C. stated, raised the expectations of the workers' organisations about the early abolition of the L.A.T.; but as the question was linked up with the new comprehensive industrial relations legislation, the relevant Bill for its abolition was introduced in Parliament only after full one year. Shri Desai believed both in collective bargaining and compulsory adjudication, which he thought supplemented each other; compulsory adjudication was considered necessary to prevent the employers and the workers from coming to a clash and interrupting the production programmes of national planning. Moving the Industrial Disputes (Amendment and Miscellaneous Provisions) Bill in the Lok Sabha in July 1955, Shri Desai supported the abolition of the L.A.T. on the ground of "delayed justice", which threatened to disturb and dislocate industrial production. During discussions on the Bill in the Lok Sabha, the Deputy Minister of Labour, Shri Abid Ali, pointed out that the Government had decided to abolish the L.A.T. in response to the almost unanimous

demand of the workers' organisations to that effect. The Government thought that this demand, which arose from the delays in the disposal of the appeals by the L.A.T., was justified. Shri Abid Ali also pointed out that an element of delay was inherent in the appellate procedure itself and that the processing and disposal of an appeal by the L.A.T. easily took six months—a period too long, when an award was binding for one year only. Some Members of Parliament, belonging to the employers' organisations, complained that the Government had not stuck to the decision taken at the meeting of the Joint Consultative Board of Labour and Industry held in July 1954 that the new Industrial and National Tribunals would be presided over by sitting High Court Judges, if the L.A.T. were abolished.

*Prima facie*, the decision to abolish the L.A.T. was thus taken as a result of trade union pressure. None the less, if one looks deeper, one is forced to acknowledge the weight of the following argument, put forward by Shri Khandubhai K. Desai during the debate on the Bill: "It is not that justice is not being done, but the workers should believe that justice is being done to them as expeditiously as possible, and, therefore, the Appellate Court is going." Obviously, no labour policy could be continued if most of the all-India organisations of the workers were against it as a united force. It may be noted that in deciding upon the abolition of the L.A.T., the Government did not conduct any detailed enquiry into the question of delays in the disposal of appeals by the L.A.T. and the extent of uniformity achieved by it in industrial awards. It seems the Government felt that there was little point in such an inquiry in face of the united opposition of the more important workers' organisations against the continuance of the L.A.T. and the general agreement for the abolition of the L.A.T. arrived at in July 1954 between the representatives of the employers and the workers at the meeting of the Joint Consultative Board of Industry and Labour. The Government conceded that the L.A.T. had achieved some uniformity in basic principles to govern industrial awards, but the consideration of further uniformity had to be balanced against the requirement of speedy settlement of industrial disputes.

Though the L.A.T. was formally abolished in 1956 and ceased to function in May 1959, the Full Bench Formula evolved by it continues to hold its ground. The Formula was discussed

in detail and approved by the Supreme Court in May 1959 in the *Associated Cement Companies case*. The Supreme Court pointed out that on the whole the Formula had worked satisfactorily in a large number of industries all over the country and by and large labour's claim for bonus had been fairly and satisfactorily dealt with. The Supreme Court further said that the Formula was elastic enough to meet reasonably the claims of industry and labour with fair play and justice. It added that if the Legislature, however, felt that the claims for social and economic justice made by labour should be re-defined, it could legislate to that effect, or a high-powered commission might be appointed to look into the matter. In another case, the Supreme Court ruled that the living wage was a relative and expanding concept and that the distribution of the available surplus between the three claimants—the industry, the shareholders and the workmen—would depend upon various factors relevant to a case. In several cases, the Supreme Court deprecated any departure from the Full Bench Formula. The trade unions even started to complain that the Supreme Court was virtually functioning as another appellate tribunal, with the help of which the employers could prolong litigation and deny or delay the workers' rightful demands.

#### THE DECISION "NOT TO REVIVE"

When the L.A.T. was set up in 1950, some of the State Governments had warned that it would lead to delays and the very objective of speedy settlement of industrial disputes would thereby be defeated. The L.A.T. was abolished in 1956 to avoid delays in the disposal of appeals but there were more delays after that, through an increase in the number of appeals to the High Courts and the Supreme Court.

The question of revival was first posed in September 1958 by the Law Commission in its Fourteenth Report (Reform of Judicial Administration, Vol. I) in face of the large increase in the number of petitions for special leave to appeal to the Court. It was then taken up in October that year by the All-India Organisation of Industrial Employers. The Law Commission recommended that Legislature should provide for an adequate right of appeal in labour matters either by reviving the Labour

Appellate Tribunal or by empowering the High Courts to hear appeals in suitable cases. In July 1957, the Working Committee of the I.N.T.U.C., disturbed over the attempt by a section of the employers to convert the High Courts and the Supreme Court into a labour appellate body, had urged that appeals to the Supreme Court and the High Courts should be barred if necessary by an amendment to the Constitution. The I.N.T.U.C. had expressed similar views earlier also in 1951 and 1952. However, at the Sixteenth Session of the Standing Labour Committee (October 1958) and the Seventeenth Session of the Indian Labour Conference (held in July 1959, which considered the recommendations of the Law Commission), the I.N.T.U.C., while opposing the revival of the L.A.T., favoured the creation of a Special Bench of the Supreme Court. The Special Bench, the I.N.T.U.C. felt, would be able to specialise in labour matters and decide the appeals on considerations not only of law but also of social justice. However, a former General Secretary of the all-India I.N.T.U.C., then Labour Minister in a State, thought that the L.A.T., if revived, would help reduce the number of appeals going to the Supreme Court and would also be cheaper for the workers in terms of expenses.

The A.I.T.U.C. representative to the Seventeenth Session of the Indian Labour Conference opposed the creation of a Special Bench of the Supreme Court and urged that the power of the Supreme Court to entertain appeals on industrial awards should be taken away, as it was being utilised by the employers to obstruct the just claims of the workers. He further proposed that the High Courts should be empowered to constitute Labour Benches and award positive remedies; and if it was not possible to do so, the L.A.T. might be revived, provided arrangements were made to eliminate the delays and reduce the legal costs. The representatives of the H.M.S. and the U.T.U.C. favoured the revival of the L.A.T. The H.M.S. was of the view that appeals against the awards of the tribunals to the Supreme Court should be disallowed, while the U.T.U.C. delegate felt that the jurisdiction of the Supreme Court to hear such appeals could not be curtailed.

When the question was considered again at the Eighteenth Session of the Standing Labour Committee in January 1960, both the H.M.S. and the U.T.U.C. again favoured the revival of

the Appellate Tribunal. The representative of the A.I.T.U.C., while agreeing in principle to "revival", felt that it should be accompanied by banning of appeals to the High Courts and the Supreme Court and laying down of a time-limit for the disposal of appeals by the revived Appellate Tribunal. Opposing the revival of the L.A.T., the I.N.T.U.C. delegate emphasised that only one appeal should be allowed, either to the Special Bench of the Supreme Court or to the L.A.T. to be revived.

At the Nineteenth Session of the Indian Labour Conference in July 1961, both the A.I.T.U.C. and the I.N.T.U.C. opposed the revival of the appellate body. The I.N.T.U.C. representative felt that if the L.A.T. were revived, the employers, having once developed the habit of preferring appeals to the Supreme Court, would still persist in that habit and the new L.A.T. would thus only become a factor for additional delays. The A.I.T.U.C. delegate said that the L.A.T. would only lead to further delays at an additional intervening level between the tribunals and the High Courts and the Supreme Court. The representative of the U.T.U.C. favoured 'revival', provided there would be no further appeal to the Supreme Court.

\* \* \*

The employers' representatives, during discussions at the tripartite meetings during 1958-61, strongly urged for the revival of the L.A.T. They pointed out that the L.A.T. had helped evolve case law and set norms on vital issues like bonus and wages. The L.A.T. had exercised a sobering influence over the lower tribunals and if it was not revived and appeals to the High Courts and the Supreme Court were also barred, there might once again be diversity and chaos in industrial awards in the matter of basic principles. The large increase in the number of appeals going to the Supreme Court after the abolition of the L.A.T., and the fact that the majority of appeals to the Supreme Court had been filed by the employers and many of them involved important questions of law and principles (as evidenced by the two studies conducted by the Implementation and Evaluation Division of the Ministry of Labour and Employment) pinpointed the need for allowing appeals against the awards of tribunals which were not manned by judicial personnel of high calibre and status. The employers' organisations repeated their complaint that the Government had not kept the understanding reached

at the meeting of the Joint Consultative Board of Industry and Labour in regard to the appointment of sitting High Court Judges to the Industrial and National Tribunals. They further urged that if the L.A.T. was not to be revived, appeals should continue to be allowed to the High Courts and the Supreme Court, and that even a Special Bench in the Supreme Court might be created to decide labour cases.

\* \* \* \*

As regards the Government's stand on the issue of revival, in the Memorandum placed before the Seventeenth Session of the Indian Labour Conference (July 1959) the Government invited the attention of the Conference to the recommendations of the Law Commission, and expressed the hope that the observance of the Code of Discipline was likely to reduce the number of appeals to the High Courts and the Supreme Court. The Conference recommended that the different suggestions made during discussions should be examined by the Government in detail. The Government accordingly had the different alternatives to the revival of the L.A.T. examined thoroughly by the Ministry of Law and in accordance with the latter's advice the Memorandum to the Eighteenth Session of the Standing Labour Committee stated that the balance of advantage lay in favour of the revival of the L.A.T.

Summing up the discussions at the meeting of the Standing Labour Committee, the Chairman, Shri Gulzari Lal Nanda, Union Minister of Labour and Employment, generally favoured the revival of the L.A.T. and added that he would have gone ahead with the proposal of revival if all other parties were in its favour, despite the opposition of the I.N.T.U.C., as it was not possible to satisfy everybody. However, in face of the divergence of opinion at the meeting, Shri Nanda proposed the reconsideration of the question after an assessment had been made by the State Governments of the delays in the disposal of appeals, and of the extent of uniformity in industrial awards achieved by the Labour Appellate Tribunal. The assessment by the State Governments, which was made in the Summer of 1960, did not lead to any definite conclusion. Several State Governments expressed themselves against the L.A.T.'s revival. The results of the assessment were placed before the Indian Labour Conference at its Nineteenth Session (October 1961), which decided that the L.A.T.

should not be revived.

Thus, in deciding upon the question of revival of the L.A.T., the Government of India had the advantage of having considered the different alternatives and of a general though inconclusive evaluation of how far the L.A.T. had succeeded in achieving the objects for which it was set up.

In considering the decision not to revive the L.A.T., it seems also necessary to keep in view the shift in emphasis, during the years 1958-61, from the policy of compulsory adjudication to that of mutual negotiations, voluntary arbitration and tripartite agreements under the impact of the "Nanda approach" to industrial relations, the setting up of tripartite Wage Boards for some selected industries (leading to a narrowing down of the area of industrial disputes) and the appointment of a tripartite Bonus Commission in December 1961 to evolve suitable norms and standards for bonus payments. The Bonus Commission was appointed in pursuance of the decision taken, during discussions on labour policy for Third Five Year Plan, at the second meeting (March 1960) of the Standing Labour Committee at its Eighteenth Session. The idea of a tripartite body to look into the question of bonus was not new. As early as May 1949, the I.N.T.U.C. at its First Session had recommended the appointment of a committee of experts for purposes of evolving, among others, a scheme to assure the workers a just share in the profits of the industry. The I.N.T.U.C. repeated the proposal subsequently a few times. The Development Committee on Industries (Labour), set up by the Development Council of Industries, and the First Five Year Plan, also favoured that a tripartite body should work out the principles and norms for bonus. The H.M.S. put forward in September 1955 a similar suggestion during the discussions in the Labour Panel on the Second Five Year Plan. It may also be noted that the efforts of the bipartite Joint Consultative Board of Industry and Labour in this direction in 1951 did not meet with success.

In the memoranda submitted to the Bonus Commission, all the four all-India organisations of the workers urged that the L.A.T. Full Bench Formula should be scrapped, and that there should be a minimum bonus, determined generally on an industry-cum-region basis. The I.N.T.U.C. also contended that bonus being deferred wage should be the first charge on profits after

deducting depreciation. This was strongly contested by the Council of Indian Employers (comprising A.I.O.I.E. and E.F.I.) which pointed out that wages were a contractual right of the workmen, arising from their terms of employment but bonus was a contingent payment, depending upon the availability of surplus profits. The Council felt that the theory propounded by the I.N.T.U.C., if accepted, would effect adversely the legitimate claims of the industry and the community—the other two partners in sharing surplus profits. The employers' associations mostly favoured the substitution of the existing system of bonus by one relating bonus to productivity. The millowners' associations of Bombay and Ahmedabad urged the continuance of the Full Bench Formula.

#### THE IMPACT OF PLANNING

The case reveals that the requirements of national planning had considerable impact on the structure and content of industrial relations policies of the Government. The policy of compulsory adjudication as the measure of the last resort, of which the L.A.T. was a "legitimate child", was necessitated by the need for a continuing increase in industrial production during the First and Second Five Year Plans, uninterrupted by strikes and lock-outs. Even collective bargaining, as envisaged in the Labour Relations Bill, 1950, was to be supplemented by a labour appellate tribunal, and by compulsory adjudication as a measure of the last resort. The wider choice of "unstructured" and "free" collective bargaining was perhaps no longer open to the Government in the context of plans of speedy economic development. However, compulsory collective bargaining within a statutory framework, with compulsory adjudication in the background, as provided for in the Labour Relations Bill, 1950, was not tried; and the Bill was not resuscitated after the adoption of the new Constitution. It is understood that the major considerations in allowing the Labour Relations Bill to lapse concerned the difficulties which might have arisen in the wake of compulsory collective bargaining due to the different political affiliations of the trade union organisations, and the opposition of the workers' organisations to the restrictions on strikes and of the employers' associations to heavy penalties for various defaults. The problem

of evolving a suitable machinery for appeals against the decisions of the industrial tribunals has as yet not been fully resolved; and as Shri G.D. Ambekar put it, during the discussions at the Seventeenth Session of the Indian Labour Conference (July 1959), there is no "complete remedy" to the problem. The reader may be tempted to ask: "Would not the problem of appeals have been less complicated and less difficult to resolve, had the Government chosen a different industrial relations policy in 1950—one of 'free or compulsory' collective bargaining or one of voluntary arbitration and tripartite agreements?"

#### THE BALANCING OF INTERESTS

The case study indicates that the close identification of the I.N.T.U.C. with the objectives and policies of the political party in power, serves, on one hand, to heighten the responsiveness of the Government to the demands of the workers and, on the other, it lends to the I.N.T.U.C. the character of responsible trade unionism and thereby helps to control and contain to some extent the rising pressure of the workers as an interest group. The role of the tripartite labour consultative machinery, the case study shows, is really one of compromising and balancing the demands of the labour and the capital in the larger interests of the community and the nation, while bipartite agreements help reduce the Government's involvement in settling the conflict between the two parties. And, finally, the method of compulsory adjudication is a coercive device in the hands of the Government to regulate and balance the conflicting demands and pressures of the two interest groups.

The "Nanda approach" of mutual agreement and voluntary arbitration, which symbolises the Government's labour relations policies in recent years, contains a significant element of Gandhian philosophy which concedes the conflict of interests between the employers and the workers only in the short-run; in the long-run both these interests are integrated into the national interest. Whether the lack of a fuller recognition of the basic conflict, if any, between these interests makes for their better or worse balancing by the Government in the making of its labour policies is a remote point on which the case study does not throw much light, nor was it intended that it should.

The issue of bonus and the problem of appeals, which began to ruffle the industrial peace after 1947 and 1950 respectively, still remain to be solved for the most part. The new solutions which may be found through tripartite and bipartite agreements will, it is hoped, prove to be helpful. But even tripartite or bipartite agreements have to be built partly around some set of norms or code evolved from the past experience, whether through the process of adjudication or otherwise. Here, the case study suggests that from the point of view of the national interest there is a real need, in a developing country like India, for an objective and empirical evaluation of the past policies which have a relevance to the making of the new policies. Without such an evaluation, the formulation of public policies is likely to be influenced much more by one or the other interest group to the detriment of national interest, i.e., finding a more effective and lasting solution to a persisting problem. It also poses the question whether such a solution can ever be found.

## **CHRONOLOGY OF MAIN EVENTS**

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## THE BACKGROUND

1946

September

Shri Jagjivan Ram takes over as Minister of Labour in the National (Interim) Government.

1947

February

The workers' organisations oppose the provisions for compulsory adjudication of disputes in the Industrial Disputes Bill, 1946. The Central Legislative Assembly passes the Industrial Disputes Act.

March

May

December

The Indian National Trade Union Congress (I.N.T.U.C.) is set up.

The Industries Conference adopts the Resolution on Industrial Truce, recommending, *inter alia*, the sharing of surplus profits between labour and capital after meeting all prior charges.

1948

April

The Government of India issues a Resolution on Industrial Policy announcing, *inter alia*, the Government's intention to set up a tripartite machinery to give effect to the recommendations of the Resolution on Industrial Truce.

### DECISION ONE: THE DECISION TO ESTABLISH THE LABOUR APPELLATE TRIBUNAL

July

The Ministry of Labour reviews the question of machinery for appeals against decisions of industrial tribunals, and consults the Provincial Governments.

August

The Indian Chamber of Commerce, Calcutta, emphasises the need for a central labour appellate authority in view of the divergent and conflicting awards of industrial tribunals.

October	In its statement on "Measures to Combat Inflation", the Government of India expresses its intention to provide for review of industrial awards by a statutory authority.
November	The Federation of Indian Chambers of Commerce and Industry presses for the establishment of machinery to bring about uniformity in industrial awards.
December	The Hind Mazdoor Sabha (H.M.S.) is founded.
<i>1949</i>	
January	The Labour Ministers' Conference, at its Seventh Session, agrees to the setting up of statutory central labour tribunal with appellate jurisdiction.
March	The Standing Advisory Committee of the Central Legislature considers the case for a unified central tribunal, with both original and appellate jurisdiction.
April-May	The United Trades Union Congress (U.T.U.C.) comes into existence.
May	The Ministry of Labour addresses the Provincial Governments for their views on the proposal.
	The Bengal Chamber of Commerce stresses the need for a central labour appellate authority.
August	The United Planters' Association of Southern India demands the creation of an appellate body to review and co-ordinate the awards of industrial tribunals.
September	The Government decides to set up the Labour Appellate Tribunal.
December	The Industrial Disputes (Appellate Tribunal) Bill is introduced in the Constituent Assembly (Legislative).
<i>1950</i>	
January	The Bombay Chamber of Commerce and Industry urges the setting up of a central appellate tribunal.

February The All-India Organisation of Industrial Employers draws attention to the disastrous effects of diversity in industrial awards and presses for the early establishment of an appellate tribunal.

March During discussions on the Labour Relations Bill at the Tenth Session of the Indian Labour Conference, the workers' representatives oppose the idea of the appellate tribunal.

April The workers' representatives reiterate their opposition to the establishment of the Appellate Tribunal during the debate on the Industrial Disputes (Appellate Tribunal) Bill, 1950, in the Constituent Assembly (Legislative).

August The Constituent Assembly passes the Bill. The Labour Appellate Tribunal is constituted.

DECISION TWO : THE DECISION TO ABOLISH THE L.A.T.

October In its award concerning the dispute between the *Millowners' Association, Bombay*, and the *Rashtriya Mill Mazdoor Sangh*, the L.A.T. enunciates the Full Bench Formula in regard to the workers' claim to bonus.

1951

February In its award concerning the *Muir Mills Ltd.*, the L.A.T. departs from the Full Bench Bonus Formula.

April A Trade-unionist Member (I.N.T.U.C.), voices dissatisfaction with the working of the L.A.T. during the debate in Parliament on the Demands for Grants of the Ministry of Labour for 1951-52.

The Working Committee of the I.N.T.U.C., under the presidentship of Shri Khandubhai K. Desai, urges the Government to abolish the L.A.T.

June In its award concerning *Buckingham and Carnatic Mills* and their workers, the L.A.T.

sets out its approach to the question of basic wages, dearness allowance and management prerogatives in regard to dismissal, reinstatement and retrenchment of workmen.

July The Draft Outline of the First Five Year Plan, incorporating the "Nanda approach" to industrial relations, disfavours provision for appeals.

The Joint Board of the Representatives of the Textile Labour Association (T.L.A.), Ahmedabad, passes a resolution, criticising the Full Bench Bonus Formula and suggesting that the L.A.T. should have no jurisdiction in the Bombay State.

The T.L.A. transmits its Resolution to the Development Committee on Industries (Labour), and urges that the question of bonus should be settled by the tripartite labour machinery.

August The T.L.A. requests the Joint Consultative Board of Industry and Labour to evolve suitable norms and standards for bonus.

September The millowners' associations, Ahmedabad and Bombay, oppose the T.L.A.'s proposals.

October The Joint Consultative Board of Industry and Labour considers norms for bonus.

October At its Fourth Annual Session (Ahmedabad), held under the presidency of Shri Khandubhai K. Desai, the I.N.T.U.C. notes with concern the delays in the disposal of appeals by the L.A.T. and urges upon the Government to abolish the Appellate Tribunal.

1952

April At its Tenth Session, the General Council of the I.N.T.U.C. reiterates that the L.A.T. should be abolished.

At its Third Annual Convention, held at Bombay, the Hind Mazdoor Sabha urges the abolition of the L.A.T., on grounds of long delays in its decisions.

May	Shri V.V. Giri takes over as Labour Minister and enunciates a new policy of direct negotiations and settlement and collective bargaining.
July	The All-India Organisation of Industrial Employers urges for provision for appeals against the awards of industrial tribunals. The Ministry of Labour circulates a comprehensive Questionnaire on Industrial Relations to elicit the views of the State Governments and workers' and employers' organisations, <i>inter alia</i> , on continuance of the L.A.T., composition of the industrial tribunals, and direct settlement and collective bargaining versus compulsory adjudication.
October	The Indian Labour Conference, at its Twelfth Session held at Nainital, discusses the replies to the Questionnaire on Industrial Relations, and agrees in general to abolish the L.A.T. The Indian Labour Conference also generally endorses the 'Giri approach' to industrial relations, with its emphasis on mutual settlement of disputes and collective bargaining.
December	At its Fifth Annual Session, held at Modinagar under the presidency of Shri Khan-dubhai K. Desai, the I.N.T.U.C. reiterates its demand for the abolition of the L.A.T.
1953	
May	The General Council of the I.N.T.U.C. repeats its demand for the abolition of the L.A.T.
September	The Indian National Sugar Mills Workers' Federation urges the abolition of the L.A.T.
December	At its Fourth Annual Convention held at Nagpur, the Hind Mazdoor Sabha urges for legislation to set up machinery for speedy settlement of industrial disputes. At its Sixth Annual Session, held at Jalgaon under the presidency of Shri Michael John, the I.N.T.U.C. expresses concern over the inordinate delay in the abolition of the L.A.T.

1954

January

During discussions at the Thirteenth Session of the Indian Labour Conference, the employers' representatives demand the continuance of the L.A.T.

Shri Giri admits that detailed consultations since the Nainital Conference have convinced him that conditions in the country are not yet ripe for a change to a policy of collective bargaining and that the policy of compulsory adjudication must continue for some time more. During the debate in Parliament on the Demands for Grants of the Ministry of Labour for 1954-55 it is urged that the L.A.T. should be abolished as it was creating a litigious spirit among the parties.

May

The All-India Trade Union Congress (A.I.T.U.C.), at its Twenty-Fourth Session, denounces the machinery for compulsory adjudication and urges the fixation of time-limits for completion of proceedings.

July

At the meeting of the Joint Consultative Board of Industry and Labour, the employers' representatives tentatively agree to the abolition of the L.A.T. on the understanding that the Industrial and National Tribunals, under the proposed three-tier adjudication machinery, would be presided over by sitting High Court Judges.

August

The Government of India defers the introduction of a comprehensive Labour Relations Bill and decides in favour of the amendment of the Industrial Disputes Act, 1947, to meet the immediate requirements.

Shri V.V. Giri resigns as the Minister of Labour, on the question of the modification by the Government of the L.A.T. award in the Bank Dispute.

September

Shri Khandubhai K. Desai is sworn in as Minister of Labour.

November At the meeting of the Joint Consultative Board of Industry and Labour, the employers' representatives reiterate their demand for the strengthening of the labour judiciary. The Labour Ministers' Conference, at its Eleventh Session, considers the draft amendments to the Industrial Disputes Act, 1947, agrees to the establishment of a three-tier system of Industrial Courts and Tribunals, and decides that, in view of the difficulties in securing the services of the High Court Judges, the presiding officers of the new Industrial Tribunals might include persons who had been members of a tribunal for not less than two years, and the presiding officers of the National Tribunals might be retired High Court Judges.

At the Labour Ministers' Conference, Shri Khandubhai K. Desai explains the Government policy of recourse to compulsory adjudication as a measure of the last resort.

1955

January

The I.N.T.U.C. Annual Report to its Seventh Session (Nagpur) points out that the appointment of Shri Khandubhai K. Desai as the Union Minister of Labour has raised expectation about the abolition of the L.A.T.

The L.A.T. gives three important awards regarding increase in dearness allowance and basic wages, bonus, and unemployment compensation, in the disputes in the textile industry between the *Millowners' Association, Bombay* and *Rashtriya Mill Mazdoor Sangh*.

The I.N.T.U.C. President, Shri G.D. Ambedkar, expresses dissatisfaction with the L.A.T. Full Bench Formula.

The Employers' Association of Northern India expresses concern over the decision of the Government to abolish the L.A.T.

March      The Employers' Federation of India and the All-India Organisation of Industrial Employers complain that the Government has not kept the agreement reached at the meeting of the Joint Consultative Board of Industry and Labour in July 1954 that the Industrial and National Tribunals would have sitting High Court Judges as presiding officers.

· The Federation of the Indian Chambers of Commerce and Industry urges the retention of the L.A.T.

April      At its Seventh Annual Conference (Sholapur), the Indian National Textile Workers' Federation denounces the Full Bench Formula.

May      The General Council of the I.N.T.U.C. criticises the Full Bench Formula and urges the Government to evolve suitable norms for distribution of bonus.

June      The Government of India promulgates an Ordinance, amending the Industrial Disputes (Appellate Tribunal) Act, 1950, with a view to expediting the disposal of applications pending with the L.A.T.

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July      The Bombay Bench of the U.T.U.C. expresses grave concern over the anti-labour awards of the L.A.T.

The A.I.T.U.C. criticises the L.A.T. awards. The Bombay State Trade Union Committee of the A.I.T.U.C. boycotts the L.A.T. for its pro-employer attitude and inordinate delays in disposal of appeals.

The Employers' Federation of India criticises the pressure tactics of the workers' organisations in urging the abolition of the L.A.T. In its Memorandum on "Labour Policy in the Second Five Year Plan", the I.N.T.U.C. explains at length the reasons for its demanding the abolition of the L.A.T.

The *Indian Worker*, the official weekly organ of the I.N.T.U.C., gives vent to the rising

opposition of the workers' organisations to the L.A.T.

August The Industrial Disputes (Appellate Tribunal) Amendment Bill is introduced in the Parliament (House of the People) to replace the Ordinance on the subject.

During the debates in the two Houses of Parliament on the Bill, Members of Parliament, having affiliation with the workers' organisations, protest against the delay in the abolition of the L.A.T.

September The Government approves of the legislation, *inter alia*, for the abolition of the L.A.T. The Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, 1955, is introduced in the Lok Sabha, providing, among others, for the abolition of the L.A.T. and creation of a three-tier adjudication machinery.

A Sub-Committee of the Labour Panel on the Second Five Year Plan recommends that the basic principles for determination of bonus should be settled by the parties concerned after an expert examination by the Planning Commission. The representatives of the I.N.T.U.C. and the H.M.S. favour compulsory adjudication, but the A.I.T.U.C. opposes it.

1956

June The Second Five Year Plan places emphasis on mutual negotiations and voluntary arbitration in settlement of industrial disputes, importance of internal sanctions for maintaining industrial discipline and peace, increased association of labour with management through joint councils and establishment of tripartite wage boards.

July During discussions in the Lok Sabha on the Industrial Disputes (Amendment and Miscellaneous Provisions) Bill, Members of Parliament, belonging to trade unions, press for the abolition of the L.A.T.

	The Lok Sabha passes the Bill.
August	The Rajya Sabha debates and passes the Bill.
	The Bill is assented to by the President of India.

September	The Industrial Disputes (Appellate Tribunal) Act, 1950, is repealed; and the L.A.T. is abolished.
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**DECISION THREE : THE DECISION "NOT TO REVIVE"**

**1957**

April	Shri Gulzari Lal Nanda takes over as the Minister of Labour.
July	The I.N.T.U.C. Working Committee complains of the increase in the number, and delays in disposal, of appeals on labour matters to the High Courts and the Supreme Court.
	At its Fifteenth Session, the Indian Labour Conference adopts certain 'norms' for 'need-based' minimum national wage and recommends the establishment of tripartite wage boards.

**1958**

May	The Labour Ministers' Conference decides that in view of the difficulties in securing the services of the High Court Judges, the Industrial Disputes Act might be amended to provide that serving or retired District Judges might be appointed as presiding officers of Industrial Tribunals.
	At the Sixteenth Session of the Indian Labour Conference, the employers' delegates agree to the appointment of serving or retired District Judges to preside over Industrial Tribunals.
	The Indian Labour Conference adopts the Code of Discipline, emphasising self-discipline, mutual negotiations and voluntary arbitration in the settlement of industrial disputes.

September The Law Commission of India, in its Fourteenth Report on "Reform of Judicial Administration", points to the increase in the number of labour appeals before the Supreme Court and recommends that the Legislature should provide for the right to appeal either by constituting tribunals of appeal or by empowering the High Courts to hear appeals in suitable cases.

October The All-India Organisation of Industrial Employers poses the question of reviving the L.A.T. to re-inforce labour judiciary.

**1959**

May In *Associated Cement Companies case*, the Supreme Court upholds the L.A.T. Full Bench Bonus Formula.

July At the Sixteenth Session of the Standing Labour Committee, the delegate of the Employers' Federation of India stresses the need for an appellate tribunal in view of the varying and conflicting decisions of the tribunals.

During discussions at the Seventeenth Session of the Indian Labour Conference, the representatives of all the three all-India organisations of the employers press for the revival of the L.A.T. to reduce the number of appeals to the Supreme Court. The workers' organisations, except the I.N.T.U.C., generally favour the proposal for 'revival'. The Conference decides that the different alternatives to provide for appeal should be examined in detail.

The Indian Labour Conference also decides that increased use should be made of mediation and voluntary arbitration by the employers and the workers, and that adjudication should be avoided except in certain specified types of cases.

1960

January

As advised by the Ministry of Law, the Government in its Memorandum to the Eighteenth Session of the Standing Labour Committee, favours the revival of the L.A.T. The representatives of the workers' organisations are divided in their opinion but the employers' delegates unanimously favour the proposal for 'revival'.

The Standing Labour Committee considers the different alternatives to provide for appeal and defers the consideration of the question of 'revival', pending the collection of detailed information, from State Governments, on delays, number of references to the High Courts and the Supreme Court, etc.

March

The I.N.T.U.C., in its Memorandum to the Government on "Labour Policy in the Third Five Year Plan" disfavours the revival of the L.A.T. on the plea that the employers would still persist in their habit to go in appeal to the Supreme Court.

At the second meeting of its Eighteenth Session, the Standing Labour Committee recommends the appointment of a tripartite Bonus Commission to go into the question of bonus.

The Standing Labour Committee also favours a greater emphasis on bipartite and tripartite agreements and voluntary arbitration.

April

The Ministry of Labour and Employment consults the State Governments on the question of delays in disposal of appeals.

The Union Minister of Labour and Employment announces the decision of the Government of India to set up a tripartite Bonus Commission to evolve norms and standards for bonus.

At its Eleventh Annual Session, the I.N.T.U.C. adopts a resolution against the

revival of the L.A.T.

December In *New Maneckchowk Spinning and Weaving Company Ltd., and others v. T.L.A., Ahmedabad*, the Supreme Court deprecates any departure from the Full Bench Bonus Formula.

*1961*

June The Third Five Year Plan emphasises the reinforcement of the sanctions underlying the Code of Discipline, increased application of the principles of voluntary arbitration, and progressive extension of joint management councils.

October During discussions at the Nineteenth Session of the Indian Labour Conference, the representatives of some of the State Governments and of the I.N.T.U.C. and the A.I.T.U.C. oppose the proposal for 'revival', while the delegates of the employers' organisations and the U.T.U.C. favour it.

The Indian Labour Conference decides that the L.A.T. need not be revived.

THE AFTERMATH

December The Government of India appoints a tripartite Bonus Commission.

*1962*

July to December All the four all-India organisations of the workers urge the Bonus Commission to scrap the Full Bench (Bonus) Formula, while the millowners' associations of Bombay and Ahmedabad plead for its retention.



## **APPENDICES**

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The awards mentioned in the main narrative of the Case Study are not generally included in the Appendices I—IV.

## APPENDIX—I

### IMPORTANT L.A.T. AWARDS DURING SEPTEMBER 1950—OCTOBER 1952

#### BONUS

##### (a) THE NATURE OF BONUS AND AVAILABILITY OF SURPLUS

In *Ramesh Cotton Mills Co., Ltd., Morvi v. Their Workmen*, the L.A.T. (Bombay Bench, Shri K.P. Lakshmana Rao and Shri F. Jeejeebhoy) reversed the decision of the industrial court awarding 1/8th of the basic earnings for 1948 as bonus, on the ground that in the absence of surplus profits available for distribution it would be contrary to the Full Bench Formula to allow bonus to fill the gap between the wages received and the wages which would have been received had they been standardised. The Appellate Tribunal added that the remedy lay in raising an industrial dispute to fix fair wages. (9-2-51, 1952 II LLJ 606) In *Kanti Cotton Mills Ltd., Surendranagar v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that as there was no surplus available, it would be wrong to allow bonus to workers considering only that the wages paid to them were low. (19-2-51, 1952 II LLJ 613) In *Kashi Iron Foundry and others v. Their Workmen*, the Calcutta Bench of the L.A.T. (Shri R.C. Mitter and Shri G.P. Mathur) upheld the decision of the conciliation board that bonus was allowable only from the profits of the year for which it was claimed and it was not possible to re-open the claims for the previous years. (6-11-51, 1952 I LLJ 199)

In *Calcutta Electric Manufacturing Co., Ltd. v. Oriental Fan Workers' Union*, the L.A.T. (Calcutta Bench, Shri J.N. Majumdar and Shri Mitter) ruled that from the fact that the company had paid bonus at a uniform rate of 15 days' basic wages during the years 1942 to 1947, it was impossible to hold that bonus was a condition of service or that it had acquired a customary character. (20-6-51, 1952 II LLJ 324) In *Mahalaxmi Cotton Mills Ltd. v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Ghulam Hasan) affirmed the award of the State tribunal about the payment of Puja bonus on the ground that such bonus was the subject of an 'inferred' agreement between the management and the workers, the management having consistently paid bonus for a number of years including those in which the company had sustained losses. (27-6-52, 1952 II LLJ 635)

In *Vazir Sultan Tobacco Co., Ltd., Hyderabad v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that the claim for bonus was independent of the terms of employment and was based on two main considerations: (1) gap between actual wages and living wages, and (2) availability of surplus profits. The claim for bonus was irrespective of contract and the quantum could not therefore be limited

by any such contract express or implied. (14-4-52, 1952 I LLJ 814)

In *Metal Box Company of India, Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) pointed out that the adjudicator had taken the view that production bonus was not a regular part of the wages, and that it would undoubtedly affect the quantum of bonus which the workers might be entitled to claim at the end of the year, and therefore he had declined to take production bonus into consideration as an item of the total emoluments which the workmen had earned in the concern. The L.A.T. held that such a view was erroneous. There was a wide difference between production bonus and the bonus which the workmen were entitled to claim at the end of the year. A production bonus was a definite increase of emoluments according to a fixed scale, and any workman producing more than the fixed minimum automatically got such bonus. The bonus which the workmen could claim at the end of a year was an indeterminate quantity which was dependent on whether the concern had any 'available surplus of profits' in the year, and it had nothing to do with production bonus. The L.A.T. added that it had no desire to interfere with the production bonus. "A production bonus is a healthy scheme for providing an incentive to greater effort, resulting not only in higher emoluments for the workmen but also in their livelier appreciation of the dignity and worth of labour." (20-4-52, 1952 I LLJ 822)

(b) CALCULATION OF THE AVAILABLE SURPLUS

In *International Motor Co., Bombay v. Their Workmen*, the L.A.T. held that the workers had little hand in the earning of profits from the purchase and sales of cars and trucks and they were therefore not entitled to a share in the same. (15-11-50, 1951 I LLJ 169)

In *Star Paper Mills Workers' Union v. Star Paper Mills Ltd., Saharanpur*, the workers' representative challenged the balance-sheet of the concern, but the Labour Appellate Tribunal observed that the claim for bonus had to be judged from the balance-sheet as it stood in the absence of any proof that accounts had been manipulated with a view to defeating the workers' claim to bonus. (23-11-50, 1951 I LLJ 178)

In *Indian Vegetable Products Workers' Union v. Indian Vegetable Products Ltd., Bombay*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri N.S. Lokur) ruled that the company ought not have created two reserve funds—one for gratuity and the other for dividend equalisation in one year. The L.A.T. held that the workers were therefore eligible to a larger share of the profits earned by the company and it increased the share from 1/4th, as allowed by the industrial tribunal, to 1/3rd of the basic wages. (15-12-50, 1951 I LLJ 240)

In *Kanti Cotton Mills Ltd., Surendranagar v. Their Workmen*, cited earlier, the L.A.T. (Shri Lakshmana Rao and Shri Jeejeebhoy) ruled that profits accruing from the sale of cast iron parts, cotton waste and scrap, rent and profits from the grain shop were unrelated to the workmen's efforts and had to be deducted in calculating the surplus available. (19-2-51, 1952 II LLJ 613)

In *General Motors India, Ltd. v. Their Workmen*, the L.A.T. (Bombay

Bench, Shri Lakshmana Rao and Shri Mathur) said that the lower tribunal had displayed an undue solicitude for the company when it had remarked "whatever the surplus in any given year, the bonus to be distributed must bear a fair relation to the bonus granted in the past". The L.A.T. held that in arriving at the available surplus it would be dangerous to allow provision for future losses, and it accordingly directed raising of quantum of bonus from one-fourth to one-third of the annual basic wages. (20-7-51, 1951 II LLJ 495) In the case of *Ganesh Flour Mills Co., Ltd. v. Their Workmen*, the L.A.T. (at Allahabad, Shri Mitter and Shri Mathur) observed, "In considering the question of bonus for 1948-49, we have to proceed upon the profits of that year. Whether the profit in future years is likely to be less or not, is not relevant to the enquiry". The L.A.T. allowed 4% return on bonus shares which constituted a substantial portion of the share capital. (14-1-52, 1952 I LLJ 524) In *Vazir Sultan Tobacco Co., Ltd., Hyderabad v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) confirmed the claim for bonus and reiterated that future claims by management could not be included in determining the available surplus. (14-4-52, 1952 I LLJ 814)

In *Warner Bros., First National Pictures, Inc. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) reversed the decision of the industrial tribunal (awarding 2/13ths of basic salary as bonus) on the ground that though the concern had no fixed capital, it could claim a substantial measure of profits on its efforts as fair return and if that were allowed there would be no surplus left for distribution of bonus. (16-2-51, 1951 I LLJ 459) In *Nizam Sugar Factory Ltd., Hyderabad v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that in calculating the available surplus, the balance of profits brought forward from the previous year should be excluded. It also allowed 4% return on the working capital as against 2% laid down in the Full Bench Formula, and ruled that the latter percentage was not an invariable rule and that each case depended on its merits. (8-1-52, 1952 I LLJ 386) In *M/s Metro Motors v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that a higher return than 6% on capital would be justified in view of the large risks and uncertain prospects of the automobile trade. It accordingly reduced the quantum of bonus. (30-5-52, 1952 II LLJ 205)

In *Textile Mills, Ahmedabad v. Textile Labour Association*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Mathur) said that the amount required for annual rehabilitation of land, plant and machinery should be calculated by multiplying the depreciated value of the block by 2.7 and spreading it over a period of 15 years. The L.A.T. also reiterated that no bonus could be allowed if no profits were left over after deducting depreciation and other charges. The L.A.T. added that the contractual managing agency commission must be allowed in full. The L.A.T. agreed with the industrial tribunal that "it may well be expedient from the point of view of industrial peace to determine the quantum of bonus industry-wise in a given locality; but in the absence of any legislative provision entailing upon us the obligation to direct even those mills that have not

made profits but have suffered loss instead to pay bonus alike with those that have made profits, we do not think we would be adjudicating equitably in relation to the former if we direct them to pay bonus." (18-7-51, 1951 II LLJ 354)

In *Deccan Sugar and Abkari Co., Ltd., Pugalur v. Their Workmen*, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) reiterated that the full amount of depreciation allowed by the income-tax authorities must be deducted as one of the prior charges in calculating the available surplus no matter what the company did with this money. The L.A.T. ruled that if this was done, there would remain no surplus for awarding additional bonus, beyond what had been paid by the company. The L.A.T. added that the usual amount of depreciation as allowed by the income-tax authorities might be deducted as a prior charge for the purposes of the Formula, and it did not matter whether the company divided up the depreciation allowed by the income-tax authorities into several smaller items, or even if it did not show the full depreciation in its balance-sheet and profit and loss account. (13-3-52, 1952 I LLJ 657)

In *T. Tellery & Sons Ltd., Bhadohi, Benares v. V.D.N. Sahi*, President, Benares Carpet Mazdoor Sabha, the L.A.T. (Calcutta Bench, sitting at Allahabad, Shri Mathur and Shri L.K. Jha) held that there could be no objection to the actual payment of bonus for the previous year out of the accounts of a year. But in calculating profits of the year of payment for determining its bonus, the amount paid as bonus for the previous year could not be taken into account. The L.A.T. further said, "The next contention...is that the income-tax has to be paid before the bonus and, therefore, it ought to be calculated on the entire amount. We do not think that it is so. Income-tax assessment is made very late and the assessee always gets the exemption on the amount paid as bonus. Even if the income-tax is assessed on the entire amount the assessee will get the deduction in the next year when the bonus is actually paid." As regards the piece-raters, the L.A.T. observed, "It is not denied that they have to be placed on the same level as the time-raters. It was obviously just and proper that they should have been allowed bonus on the same scale." (15-10-52, 1953 LAC 167)

In *Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh*, the industrial court had awarded for the year 1950 bonus equal to 15% of the annual basic wages. On appeal, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) reaffirmed that the depreciation reserves were entitled to a return but added that the claim for it could be acceptable only when it was shown how and for what period the reserves had actually been utilised. It was held that cash in bank or excess profit tax would not be entitled to a return. Pointing out that there was no fixed rule as to the rate of return on reserves used as working capital and that each case must depend on its individual facts and in appropriate cases it had allowed a return as high as 4%, the L.A.T. said that it was not prepared to review the rate of return, i.e. 2%. The L.A.T. confirmed the allocation of profits for rehabilitation of buildings by the Industrial Court, estimated by multiplying the original value of the building by 2.25 and spreading it over a period of 27 years. The L.A.T. did not agree with the contention of the workers' representative

that the sum of Rs. 72 crores allowed in the Full Bench Formula case as rehabilitation reserve for machinery (spread over a period of 15 years) was "so liberal as to include the cost of rehabilitation of buildings." The L.A.T. further held that the managing agents would be entitled to commission in accordance with their contract and that it was not the time suitable to consider scaling down the rates of their remuneration. It added, "It cannot be disputed that a substantial variation in the price of machinery either way would justify a reconsideration of the figure of 72 crores, but such reconsideration must not be hastily undertaken and could be justified only on the basis of a substantial change of a stable character extending or likely to extend over a sufficient number of years so as to make a definite and appreciable difference in the cost of replacement." (21-2-52, 1952 I LLJ 518)

In *Alcock Ashdown & Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) remarked that after the Full Bench Formula the concerns had become "rehabilitation conscious" and the claims for rehabilitation were expanding. It rejected the claim for a return of 4% on working capital and pointed out that it must be shown what funds were utilised, for what purpose and for what period, if such a claim were to succeed. The L.A.T. increased the bonus from 1/12th of basic wages as awarded by the industrial tribunal to 1/6th, on the ground that the available surplus justified it. (21-4-52, 1952 I LLJ 819) In *Metal Box Company of India, Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) observed as follows: "We have observed in another decision...that ever since our Full Bench decision the claims of concerns to prior charges out of net profits on account of rehabilitation of machinery and buildings have been expanding and the case before us is no exception." The L.A.T. allowed 4% return on capital, considering that a very substantial portion of it represented bonus shares. It added, "It is unfortunately too true that all our calculation as to rehabilitation may be disproved by subsequent events; it is impossible to say what the trend of world prices will be in the next 15 years or which circumstances will intervene before that period to upset such calculation one way or the other, and no calculations of this kind are capable of mathematical accuracy. We have to take a commonsense view of these matters and make an allowance for rehabilitation to the best of our ability and in accordance with our formula." (28-4-52, 1952 I LLJ 830)

In *Dalmia Cement Co., Ltd., Dalmiapuram v. Their Workers*, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Jeejeebhoy), without laying down any principles which might be regarded as qualification of the Full Bench Formula, refused to allow depreciation on new plant to such an extent as would destroy the claim of the workers to bonus. It reduced the bonus, from 1/4th of the annual basic earnings, as allowed by the industrial tribunal, to 1/6th having regard to the state of profits of the concern. (8-8-52, 1952 II LLJ 451)

(c) THE QUANTUM OF BONUS

In *Indian Vegetable Products Workers' Union v. Indian Vegetable Products*

*Ltd., Bombay and others*, cited earlier, the L.A.T. increased the quantum of bonus from 3 to 4 months' basic wages—to 77% of the available surplus (Rs. 70,000 out of Rs. 90,973). (15-12-50, 1951 I LLJ 240)

In *Firestone Tyre & Rubber Company case*, the L.A.T. said that it was a misconception to regard the grant of a particular number of months' basic wages, say 4½ months, as the top ceiling for the grant of bonus in all such cases and that it was necessary to deal with each case having regard to all its circumstances. [Appeals Nos. 324 and 333 of 1951 (unreported) (LAT)]

In *Nizam Sugar Factory Ltd., Hyderabad v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that the bonus equal to 6 months' wages, as awarded by the industrial tribunal, would exhaust all the available surplus for the year concerned, which was not fair; and it therefore reduced it to 4 months' wages. (8-1-52, 1952 I LLJ 386) While not interfering in the matter, in the case of *Millowners' Association, Bombay*, cited above, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) was of the opinion that in granting a bonus of 15% of basic earnings the industrial court had erred, if at all, on the side of too much rather than too little, for the distribution of Rs. 1.56 crores had had the effect of emptying the till of the available surplus. (21-2-52, 1952 I LLJ 518)

In *Caltex (India) Ltd. v. Their Employees*, the L.A.T. (Calcutta Bench, Shri Majumdar, Shri Mitter and Shri Mathur) increased the award of bonus from 2 to 3 months' basic wages, on account of availability of a larger surplus. (28-3-52, 1952 II LLJ 183)

In *Distillery and Brewery Workers' Union v. Dyer Meakin Brewery Ltd.*, the L.A.T. (Lucknow Bench, Shri Mathur and Shri Ghulam Hasan) observed that there was no hard-and-fast rule as to the rate at which the bonus should be calculated and that each case depended upon its own facts. The industrial tribunal while laying down those principles had taken care to point out that they were not exhaustive. In that case, one-fourth of the basic wages was allowed as bonus. There might be cases in which more or less might be awarded as being reasonable but it was not possible to lay down an inflexible rule that in all circumstances a fixed percentage should be allowed. (25-7-52, 1952 II LLJ 590)

In *Trichinopoly Mills Ltd. v. National Cotton Mills Workers' Union*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Lokur) awarded payment of bonus equal to 86.6% of the available surplus (Rs. 30,000 out of Rs. 34,660)—equal to 3½ months' basic earnings. (27-12-50, 1952 II LLJ 608)

#### (d) WHETHER BONUS SHOULD BE UNIT-WISE OR INDUSTRY-WISE

In *Sugar Mills of Bihar v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Majumdar, Shri Mitter and Shri Mathur) opined that as sugar industry was an established industry and conditions of service and wages were standardised, bonus should be granted industry-wise and not unit-wise, "leaving it to a particular unit to escape the liability by positively proving loss". The L.A.T. agreed with the lower tribunal's award, linking bonus not to profit but to production. The L.A.T. explained, "As the real profit or loss can only be ascertained from reliable balance-sheets, or reliable profit and loss

accounts, the rule of linking bonus to profit cannot be adopted where no reliance can be placed on a large number or even an appreciable number of balance-sheets and profit and loss accounts." (7-3-51, 1951 I LLJ 469) A similar decision was given in the dispute between *Sugar Mills, U.P.* and their workmen. In that case, the L.A.T. (Calcutta Bench, Shri Majumdar, Shri Mitter and Shri Mathur) said that the claim for bonus must be considered as a "collective claim from labour on the industry as a whole". It exempted all factories producing one lakh maunds or less of sugar in 1949-51 from the liability to pay bonus. Referring to the difficulties in consolidation of balance-sheets for purposes of determining whether bonus could be awarded, the L.A.T. observed: "...we are not prepared to reject every one of the balance-sheets on the ground that they are unreliable but we are of opinion that taken as they are, they are not helpful for...finding out the available surplus on an industry-wise basis." (19-12-51, 1952 I LLJ 615)

In *Deccan Sugar and Akbari Co., Ltd., Pugalur v. Their Workmen*, cited earlier, the L.A.T., however, awarded bonus on the basis of the Full Bench Formula (available surplus unit-wise), on the ground that service conditions and wages in sugar industry in Madras State had not been standardised. (13-3-52, 1952 I LLJ 657)

(e) BONUS IN BRANCHES OF PARENT CONCERN

In *Rohit Mills Ltd., Ahmedabad v. Sri R.S. Parmar and others*, reversing the decision of the industrial court and affirming that of the labour court, the L.A.T. held that where the parent firm held the accounts of its units separately and treated them as individual units, the question of bonus should also be determined separately. (5-2-51, 1951 I LLJ 463) In *Pipe Mill Mazdoor Union, Lucknow v. Indian Hume Pipe Co., Ltd.*, the L.A.T. (at Allahabad, Shri Mitter and Shri Mathur) decided that where a company had several branches, all doing the same business, but if at one branch separate accounts were kept as regards capital and profit and loss as if it were an independent unit, that branch must be regarded as a separate entity for purposes of bonus. (14-2-51, 1951 I LLJ 379)

In *Ajodhya Distillery, Raja-ka-Sahaspur v. Ajodhya Distillery Mazdoor Union*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) decided that if profits of the several concerns of a company were pooled together and the liabilities of the different concerns met out of the joint resources, irrespective of the profits of each concern, bonus should be payable on overall surplus and not on the profits of an individual concern. (10-8-51, 1951 II LLJ 613)

In *G.G. Industries Mazdoor Union v. G.G. Tin Factory, Agra*, the L.A.T. (at Allahabad, Shri Mitter and Shri Mathur) held that as the several undertakings of the same proprietor were held separate from each other, and separate accounts were maintained for each factory, the workers of the factory which had made profit were entitled to bonus, irrespective of whether the proprietor had profit or loss taking the overall picture of all the concerns. (14-1-52, 1952 I LLJ 507) This view was repeated in *Distillery and Brewery Workers' Union v. Dyer Meakin Brewery Ltd.* (25-7-52, 1952 II LLJ 590)

In *Indian Oxygen and Acetylene Co., Ltd., Kanpur v. Indian Oxygen*

*Workers' Union*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) ruled that bonus should be based on the profits of the entire company, as the accounts of the several branches of the company were held as one entity. (6-9-51, 1951 II LLJ 608) In *Ahmedabad Manufacturing and Calico Printing Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy) enunciated the principle that in order that one unit was to be an integral part of another unit of the same concern, there must be nexus of integration, some essential dependence of one on the other or some unity of purpose or co-ordinated activity towards a common end. (24-10-51, 1951 II LLJ 765)

In *British Insulated Callender's Cables Ltd. v. Their Workmen*, where the employer was carrying on business in India, Pakistan and Ceylon for the relevant years, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) ruled that the bonus for the Indian employees must depend upon the profits for India alone and not on the figures contained in the consolidated accounts of the three countries in question. (29-1-52, 1952 I LLJ 512)

In *Rashtriya Theatre Kamgar Sangh, Poona v. Western India Theatres Ltd.*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that the workers of 2 cinemas out of 7 belonging to the Western India Theatres Ltd., in the Poona circuit, would not be eligible for bonus in view of the loss sustained by them all together as it had not been shown that these two theatres had their finances and accounts isolated from the rest. (28-5-52, 1952 II LLJ 207)

In *Bombay Suburban Electric Supply Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) noted that as the accounts of the branches of the company at Jhansi and Gorakhpur were maintained as one single unit, the company had rightly been held to be one unit for payment of bonus. (27-6-52, 1952 II LLJ 195)

#### (f) CALCULATION OF BONUS ON BASIC WAGES

In the dispute between Distillery and Brewery Workers' Union and *Dyer Meakin Brewery Ltd.*, the L.A.T. (Lucknow Bench, Shri Mathur and Shri Ghulam Hasan) rejected the demand of workers for calculating bonus on consolidated wages, on the ground of the past practice to link bonus to basic wages. (25-7-52, 1952 II LLJ 590)

#### (g) WORKERS' SHARE IN RESERVES AND LINKING OF BONUS TO DIVIDENDS

In the dispute between *Trichinopoly Mills Ltd.* and National Cotton Mills Workers' Union, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Lokur), reducing the quantum of bonus awarded, decided against the linking of bonus to dividends on the ground that the employers might apportion large profits to reserves and thereby reduce the dividends. It added that while the shares of bonus in the surplus profits might not be fixed, it should bear some relation to such profits. The L.A.T. slightly modified the award of the industrial tribunal granting  $3\frac{1}{2}$  months' wages, inclusive of night allowance and production allowance, and awarded  $3\frac{1}{2}$  months' wages, i.e., 29 1/6 per cent of the total basic earnings during the year, inclusive of

night-shift allowance but exclusive of production allowance and dearness allowance. (27-12-50, 1952 II LLJ 608)

In *Lahore Electric Supply Co., Ltd. v. Lahore Electric Supply Employees' Union*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter), in appeal, reversed the decision of the industrial tribunal allowing 10% of the reserves of the company to be distributed among its employees at the time of its being taken over by Government. The L.A.T. explained the stand taken by it as follows: "All these propositions laid down by the tribunal assume that labour has a direct right to a share of profits which, in our opinion, is a large assumption. The employees are not certainly partners of the shareholders and profit-sharing scheme as such is in a nebulous state in India. ...Where there is a surplus after meeting prior charges and reasonable return to capital, the employees have only a claim for bonus, which is only a temporary expedient to fill the gap between their emoluments and living wages and where no such gap exists, profit-sharing bonus is only for stimulating a collective spirit among workmen favourable to greater output and for giving them an interest in the success of the undertaking. (*Dobb on Wages*, p. 82) When the emoluments are below the living standard wages, bonus need not be in the form of profit-sharing. It is one thing to say that the claim for bonus arises when there is profit in the year under claim and another to say that the employees have a right to the undistributed sums of money which represent profits. The right comes into being only when bonus is declared as a result of adjudication or otherwise.

"...It is quite plain that the employees can have no legal basis for a claim to the reserves on the winding up of a company and also in the case where the undertaking is permanently closed. ...The formulation of grounds based on equity and justice in a general broad way is no doubt attractive but when properly analysed loses all its charm. It is said that as labour and capital had contributed to the building of the fund, labour should in justice be allowed to participate in the fund when the purpose for which the fund was created. ...What justice is there where the claim is in essence a claim to share the fruits of others' labour by persons who happened to be in the employ of the company in the particular year in which its business was wound up. Those employees can in no sense be regarded as the representatives of the older generation of workmen." (3-7-51, 1951 II LLJ 346)

In the dispute between *Textile Mills, Madhya Pradesh* and their workmen, the industrial tribunal had awarded the same percentage on bonus as given on dividends on the ground that the reserves had been utilised *pro tanto* by some of the mills to pay dividends although they had made insufficient or no profits. The industrial tribunal had held that considerations of social justice required that the workers should also share in the reserves which were obviously contributed by their labour. The L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) ruled that it would be against the Full Bench Formula to allow the adjudicator's decision to stand, as it would mean that any assets of the company could be requisitioned to pay bonus irrespective of the circumstances whether there had been a profit or loss in the year concerned. The Appellate Tribunal set aside the award of bonus (except for Empress Mills, where it was modified). (1-10-52, 1952 II LLJ 624)

## (h) CATEGORY OF WORKERS ENTITLED TO BONUS

In *Minakshi Mills Ltd., Madurai and Manapparai v. Their Workmen*, the L.A.T. (Madras Bench, Shri Jha and Shri M. Waliullah) affirmed the award of the lower tribunal granting 3 months' pay as bonus to clerical staff and held that the discrimination between clerical staff and workers was not justified. (1953 II LLJ 520)

In *Karam Chand Thapar & Bros. v. Karam Chand Thapar & Bros. Ltd., Calcutta*, the employees' association had claimed 3 months' basic salary as bonus and also objected to the system of granting bonus to different branches of employees at different scales. The industrial tribunal had held that bonus should be fixed by the company itself on the basis of the profits from year to year, but that there should be a uniform rate for clerks and subordinate staff. To this the employers did not agree. On appeal, the L.A.T. (Calcutta Bench, Shri Mitter and Shri Mathur), said, "We have considered this point carefully and in our opinion, the award must be upheld. ...all the employees are appointed by Messrs Karam Chand Thapar & Bros. Ltd. and they are in their employment. They are entitled to get bonus from their employers Messrs Karam Chand Thapar & Bros. Ltd. and the mere fact that the work of a particular company managed by it as managing agents is entrusted by it to certain employees should not deprive them of the benefit of bonus because that particular company is not earning profit. It will lead to heart burning and industrial discord, if the employees of the same employer working under the same roof get bonus at different rates". (12-9-52, 1953 LAC 152)

In *Snow White Food Products Ltd. v. Nagaswami*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) held that the workman, having put in 5/6th of service during a particular bonus period, would be entitled to bonus in proportion to the period of his service. (5-11-51, 1952 II LLJ 326) A similar opinion was given in *Burmah-Shell and two others v. Their Workmen* (Madras Bench, Shri Jha and Shri Waliullah, 15-5-53, 1953 II LLJ 236)

## WAGES

In *Army and Navy Stores Ltd., Bombay v. Their Workmen*, the Bombay Bench of the L.A.T. (Shri Lakshmana Rao and Shri Jeejeebhoy) held that basic wages once fixed should stand unchanged for a reasonable period of time unless some substantial change intervened. (13-4-51, 1951 II LLJ 31)

In the dispute between *Fertilizers and Chemicals, Travancore Ltd., Alwaye* and their workmen, the L.A.T. (Shri Lakshmana Rao and Shri Jeejeebhoy) ruled that the basic wages should not be dependent on profits. Dissenting with the view of the lower tribunal, the L.A.T. said: "Basic wage and dearness allowance when fixed are applicable whether there are profits or no profits. If the company's financial position at any future time demands a reconsideration of the wage structure, that is quite another matter. But it is not permissible to give a basic wage scale and at the same time impose a condition that it should fluctuate with any reduction in the company's profits." (23-4-51, 1951 II LLJ 211)

In *Larsen and Toubro Ltd., Bombay v. Their Workmen*, the L.A.T.

held that the award of higher wage scale was not justified where the company had not yet stabilised and needed to be nurtured before becoming capable of bearing a heavier burden of wage structure. It ruled that wages paid by the company were fair and that it was not reasonable to compare them with those of settled concerns. (22-6-51, 1951 II LLJ 221)

In *G.G. Agra Industries Mazdoor Union v. G.G. Tin Factory, Agra*, the L.A.T. (at Allahabad, Shri Mitter and Shri Mathur) ruled that where the wages paid in a concern were comparable to wages paid in similar industries in the region, the fact that in a particular year the concern had made a huge profit was no reason to raise the wage scales. (14-1-52, 1952 I LLJ 507) In *Tobacco Manufacturers (India) Ltd. v. Cigarette Factory Workers' Union*, the L.A.T. (at Allahabad, Shri Mitter and Shri Mathur) held that wages could be revised only on an industry-wise basis in the absence of any materials on the record. (15-1-52, 1952 I LLJ 509)

In *Caltex (India) Ltd. v. Their Employees*, the L.A.T. (Calcutta Bench, Shri Majumdar, Shri Mathur and Shri Mitter) ruled that where the capacity to pay was not disputed, a start must be made to raise the standard of wages to the level of fair wages and the amount thereof must be determined on a scientific basis, capacity to pay being the most potent factor. The Tribunal also fixed wages for other categories and dealt with the classification of workmen. (28-3-52, 1952 II LLJ 183)

In *Metal Box Co. of India, Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) reversed the decision of the adjudicator altering the scales of daily-rated workmen, and held that the scale granted to workmen must be in accord with the trend of wages, and supplemented, if possible, with bonus out of the available surplus of profits. The L.A.T. further opined that it was not right to change the system of hourly-rated or daily-rated clerks in the factory into a system of monthly-rated wages for the factory clerks in view of the general practice and well established arrangements in other industries in the vicinity. (20-4-52, 1952 I LLJ 822)

In *Firestone Tyre Employees' Union v. Firestone Tyre and Rubber Company of India, Ltd.*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) confirmed the award of the lower tribunal, and rejected the demand for 50% increase in the wages of piece-rated workmen. The L.A.T. observed that the existing wage structure was the result of a scientific job evaluation and compared favourably with that of other companies. It also held that a claim for a revised wage scale could be entertained only when the workers could prove that their work was either unduly strenuous or affected their health. (15-7-52, 1952 II LLJ 298)

In *WIMCO, Ambernath v. Their Workmen*, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that where the wages of the workmen were augmented by a generous scheme of production bonus and night-shift allowance, so that the total emoluments were not only adequate but also high, there could be no justification for increasing the wages. (1-8-52, 1952 II LLJ 445)

## DEARNESS ALLOWANCE

In *Narayan Oil Mills, Bombay v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Mathur and Shri Jeejeebhoy) allowed only 65% of the quantum of dearness allowance prescribed by the Millowners' Association, on the ground that the unit was of a small size and had limited capacity. (16-11-50, 1951 I LLJ 171)

In the dispute between Ogalevadi Kamgar Union, Ogalevadi and *Ogale Glass Works Ltd., Ogalevadi*, the L.A.T. (Bombay Bench, Shri Mathur and Shri Jeejeebhoy) ruled that the past wage structure should not be a consideration in fixing dearness allowance. The latter should bear a relation to the existing conditions of the concern and its reasonable expectations of the future. (30-10-50, 1951 I LLJ 17)

In *Sri Dig Vijay Cement Co., Ltd., Sikka v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that dearness allowance had to be fixed taking into consideration the total emoluments of the workers, including the value of amenities. In some concerns where a lower basic wage was paid, a higher scale of dearness allowance might be necessary. In other concerns where the basic wage was higher there had to be some adjustments. The L.A.T. reversed the decision of the lower tribunal granting dearness allowance at the rate of Re. 1 per day. (14-2-51, 1952 II LLJ 615)

In *Burmah-Shell, Madras v. Their Workers*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Mathur) rejected the demand of the workers for 100 per cent neutralisation of rise in cost of living by an appropriate increase in dearness allowance, on the ground that this had never been done in the past. (27-7-51, 1951 II LLJ 360)

In *Sri Jayalakshmi Foundry, Madras v. Their Workers*, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Mathur) ruled that the rate of dearness allowance must be related to the capacity of the employer to pay. (31-8-51, 1951 II LLJ 507)

In *Mysore Vegetable Oil Products Ltd. v. Their Workmen*, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Mathur) did not approve of a flat rate increase in dearness allowance, awarded by the industrial tribunal, on the ground that it would result in a great deal of discrimination between workers of different grades. It accordingly fixed the increase on a graded scale. (6-9-51, 1951 II LLJ 628)

In *Jagjivandas Narottamdas Metal Factory v. Their Workers*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) ruled that the financial capacity of the concern was a factor determining the ceiling of dearness allowance only. (25-10-51, 1951 II LLJ 778)

In the case of *Calcutta Tramways Co., Ltd.*, and their workmen, cited earlier, the L.A.T. held that full neutralisation of the rise in the cost of living through an increase in the dearness allowance could not be allowed, as it would tend to help towards inflation of prices. (6-11-52, 1953 I LLJ 81)

In *Cawnpore Omnibus Service Employees' Union v. Cawnpore Omnibus Service Ltd.*, the L.A.T. (at Allahabad, Shri Mathur and Shri Ghulam Hasan)

rejected the demand of the union for the revision of the rate of dearness allowance (fixed one and a half year earlier) due to rise in the cost of living, on the ground that 18 months were too short a period for re-opening the question, considering that the cost of living was subject to variations of a minor character. (22-8-52, 1952 II LLJ 800)

### NIGHT-SHIFT ALLOWANCE

In disputes concerning *Firestone Tyre and Rubber Co. of India, Ltd.* (1952 I LLJ 38); *Fertilizers and Chemicals, Travancore Ltd., Alwaye* (1951 II LLJ 211); and *Deccan Sugar Abkari Co., Ltd., Samalkot*, the L.A.T. ruled that no special allowance for night-shift was called for, as the shifts were rotated amongst workmen. (1952 I LLJ 633)

### MANAGEMENT PREROGATIVES, DISMISSAL AND REINSTATEMENT

In *U.P. Electric Supply Co. Workers' Union v. U.P. Electric Supply Co., Ltd., Lucknow*, the L.A.T. held that management alone could decide the question of promotion, though in promotion, efficiency and other qualities counted besides seniority. (17-2-51, 1951 I LLJ 456)

In *Elgin Mills Co., Ltd., Kanpur v. Suti Mill Mazdoor Union, Kanpur*, the L.A.T. ruled that punishment was *prima facie* a management function in which the tribunal should not ordinarily interfere. In the instant case the L.A.T. held the punishment awarded to be too severe, considering that the company thought the activities of the workmen concerned were not pleasing to them. The L.A.T. confirmed the reinstatement of workmen, ordered by the lower tribunal. (28-11-50, 1951 I LLJ 184)

In *Suti Mill Mazdoor Union, Kanpur v. J.K. Cotton Spinning and Weaving Co., Ltd.*, the L.A.T. reversed the orders of the lower court, on the ground that dismissal without the observance of the procedure prescribed in the Standing Orders was illegal. It questioned the new theory of the industrial court that an employee who had lost confidence could be dismissed. (14-2-51, 1951 I LLJ 457)

In *Madras Electric Tramways (1904) Ltd., Madras v. Their Workers*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao, Shri Mitter and Shri Jeejeebhoy) set aside the orders of reinstatement by the industrial tribunal, on the ground that management acting *bona fide* and with knowledge and experience of the problems which confronted it in daily work of the concern should be considered to be well qualified to judge what appropriate punishment should be in a particular case. The punishment, however, should not be excessive. Here the tribunal should not substitute its own judgement unless it was apparent that the requirements of good conduct and discipline would not be prejudiced by less punishment. The L.A.T. observed, "It is reasonable that these matters should be viewed objectively in the interest of discipline and good management." (4-6-51, 1951 II LLJ 204) The above decision was followed by the Calcutta Bench in *Kanpur Electric Supply Administration v. Sri Abdul Hamid Khan and others*. (Shri Majumdar

and Shri Mitter, 19-7-51, 1951 II LLJ 489)

In *Cawnpore Omnibus Service Ltd. v. Kanpur Omnibus Service Employees' Union*, the L.A.T. (Lucknow Bench, Shri Majumdar and Shri Mitter) held that the compensation of four months' wages allowed to the workmen for dismissal was inadequate and increased it to Rs. 2,000. It further observed: "The normal relief for dismissal in a case of this nature, as we have pointed out in *Buckingham Mills case*, would have been reinstatement. In that case, however, we further observed that the normal remedy could be departed from when other circumstances were present and that in granting relief, the matter is not to be viewed altogether subjectively from the point of view of the employer and the employee, but also objectively in the interest of the industry for bringing about a harmony in the relationship between the two." From the facts of the case, the Appellate Tribunal concluded that there would be no harmonious relationship if an order for reinstatement were made. (19-7-51, 1951 II LLJ 483)

In *Kanpur Cotton Mills Co., Ltd. v. Sri Maxwell Swing*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) confirmed that the dismissal was not justified because of lack of *bona fides* and violation of principles of natural justice. (20-7-51, 1951 II LLJ 475)

In *Diwan Sugar Mills, Sakhotitanda v. Mazdoor Sabha*, the L.A.T. (at Allahabad, Shri Mitter and Shri Mathur), setting aside the award of the adjudicator, held that no question of compensation arose on the ground of social justice when a workman had been rightfully dismissed. (7-3-52, 1952 I LLJ 805)

In *Sri Sitaram Sugar Mills Ltd., Baitalpur v. Baitalpur Chinni Mill Mazdoor Sangh*, the L.A.T. (at Dehradun, Shri Mitter and Shri Mathur) agreed with the decision of the lower tribunal that where management had lost confidence in the workman, reinstatement need not be ordered but compensation might be paid, and accordingly increased the quantum of compensation to nine months' salary. (19-5-52, 1952 II LLJ 308)

In *Sri Sitaram Sugar Mills, Baitalpur v. Baitalpur Chinni Mill Mazdoor Sangh*, cited above, the L.A.T. awarded a workman, suspected of manipulating the accounts to a nefarious purpose, nine times the monthly basic salary, as the charge against him had not been established conclusively. It observed that in the case of dismissal, if reasonable suspicion on the evidence arose against the workman, from which the management could reasonably say that it had lost confidence in his honesty, substantial compensation and not reinstatement should be ordered. (19-5-52, 1952 II LLJ 308) In *J.K. Cotton Spinning and Weaving Mills Co., Ltd. v. Sri Lalita Prasad*, the L.A.T. (Bombay Bench, Shri Mathur and Shri Mitter) held that the punishment was so excessive as to shock the conscience, it could be regarded a cogent reason of victimisation by the management. (19-5-52, 1953 I LLJ 257)

In *D.B. R. Mills Ltd., Hyderabad v. Their Workmen*, the company had discharged certain workmen with notice but without issuing any charge-sheet and on this ground the State tribunal ordered reinstatement. The company appealed against the decision. The L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) pointed out that the company's Standing Orders provided for two separate things: discharge, which required notice or pay in

lieu of notice, and dismissal, which required the issue of a charge-sheet. The Appellate Tribunal observed that discharge was merely a method of terminating service which did not require a charge-sheet and the company was therefore justified in the action it took, it being only in the case of *mala fide* discharge that a dispute could be raised. The Appellate Tribunal, therefore, set aside the order of the lower tribunal. (16-7-52, 1952 II LLJ 300)

### STRIKE PAY & REINSTATEMENT AFTER STRIKE

In *Kirkee Cantonment Board v. Kirkee Cantonment Board Kamgar Union*, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) ruled that workers who had gone on illegal strike were ineligible to reinstate-  
ment on the termination of the strike. (15-5-51, 1951 II LLJ 621)

In *Smith Stanistreet & Co., Ltd. v. Smith Stanistreet Workers' Union*, during the period of a strike the company had issued notices of dismissal under its Standing Orders, on the ground of prolonged absence from work. The State tribunal held that the termination of service was unjustified, and awarded compensation, and against this the company appealed on the ground that it had not engaged in any unfair labour practice. The Appellate Tribunal (Calcutta Bench, Shri Majumdar and Shri Mitter) dismissed the application and ruled that such a termination of services was an unfair labour practice. A strike, if it was not illegal, did not put an end to the relationship between the employer and the employee, and neither the general law of contract nor the provisions of Standing Orders regarding automatic termination of service for absence without leave would apply merely because an employee took part in a legal strike. To hold otherwise would be an interference with the fundamental right of employees to resort to a strike as a means of enforcing their demands, and such action as dismissal by the employer was a means of coercion on strike-breaking which amounted to an unfair labour practice. (22-8-51, 1953 II LLJ 67)

In *Mahalaxmi Cotton Mills Ltd. v. Mahalaxmi Cotton Mills Workers' Union*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Ghulam Hasan) said that the workers were not entitled to strike pay if the strike were illegal. Where a strike was illegal, then even if the strike was justified as a result of provocation by the company, the workers would not be entitled to any wages during the period of such a strike. While agreeing with the lower tribunal that there had been some justification for strike, it held the strike to be illegal as it had been undertaken without prior notice. It accordingly set aside the lower tribunal's award, granting strike pay. The L.A.T. also held in the instant case that as the lock-out which followed the illegal strike was legal, the workers were not entitled to any wages during the period of the lock-out. (27-6-52, 1952 II LLJ 635)

In a dispute between *Raja Bahadur Motilal Poona Mills Ltd.* and *Mills Mazdoor Sabha, Poona*, the State tribunal had refused to declare the strike by the union illegal, which had been undertaken on grounds of the company's decision to experiment on new system of work on a limited number of machines. The L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) set aside the award of the State tribunal and observed that the

experiment undertaken by the mills did not amount to the introduction of a system of rationalisation and it was essential that managements should have the right to engage in such experiments for rationalisation purposes or for the improvement of efficiency. It also pointed out that under the Bombay Industrial Relations Act and Rules a strike was illegal if it were commenced only for the reason that an employer had not carried out the provisions of any Standing Order or had made an illegal change. (4-9-52, 1952 II LLJ 467)

In *Bihar Fireworks and Potteries Workers' Union v. Bihar Fireworks and Potteries Ltd.*, the Appellate Tribunal (Calcutta Bench, Shri Mitter and Shri Mathur) set aside the order of the State tribunal on the ground that the strike was not absolutely unjustified. It remarked that strikes had been established as a legitimate weapon for ventilating grievances and registering protests and could not be said to be unjustified unless the reasons for them were absolutely perverse and unsustainable, and that it would not be proper to judge from the result of an adjudication whether a strike was justified or not. In the instant case, the workmen had struck to register a protest, which the L.A.T. held was not unjustified, and therefore it would be wrong to deduct wages for the strike period. (12-9-52, 1953 I LLJ 49)

In *Punjab National Bank Ltd. v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) ordered reinstatement of 150 employees of the bank, as it found that their dismissal was wrongful. The tribunal set up by the Government of India had refused reinstatement on the ground that the strike by the workers was illegal and that the bank was entitled to dismiss the employees, and had not considered the charge of victimisation brought forward by the All-India Punjab National Bank Employees' Federation and the U.P. Bank Employees' Union which were parties to the dispute. The L.A.T. held that for mere participation in an illegal strike the employer would not be entitled to dismiss a workman and the tribunal would be justified in ordering reinstatement in a proper case as laid down in *B. & C. Mills case*. (1951 II LLJ 314) The L.A.T. pointed out that though the Industrial Disputes Act did not touch on the question of the effect of participation in an illegal strike on employer-employee relations, such participation would affect some of the rights and obligations as flowed from that relationship; modern concepts of social justice would be outraged if the employer could dismiss the workman for mere absence due to participation in such a strike; and it would not be conducive to industrial peace, in the existing conditions, to give the employer such an unqualified right. The L.A.T. was of the view that dismissal for participation in an illegal strike would be justified if the workmen were guilty of any act of violence, intimidation or any other subversive act, or unless there was a provision in the certified Standing Orders treating participation in an illegal strike as a major misconduct warranting dismissal; and that in every such case the usual procedure should be followed. (22-9-52, 1952 II LLJ 648)

#### RETRENCHMENT

Shri Lakshmana Rao and Shri Mathur) ruled that where the employer had put the employees to strict proof of the period of unemployment consequent on discharge by the employer, then the employees should prove the actual period of unemployment to qualify for unemployment compensation. (1951 I LLJ 24)

In *Smith Stanistreet & Co., Ltd., Calcutta v. Smith Stanistreet Workers' Union*, the Appellate Tribunal (Calcutta Bench, Shri Majumdar and Shri Mitter) set aside the award of the State tribunal, granting six months' total emoluments as compensation for retrenchment. It held that the retrenchment was *bona fide* and justified. The company could not be accused of victimisation or unfair labour practice. The L.A.T. ruled, "Consequently no question of compensation arises. The workers are only entitled to a month's wages in lieu of notice according to the Standing Orders and no more." (21-8-51, 1953 I LLJ 67)

In *Kashi Iron Foundry and others v. Their Workmen*, cited earlier, the L.A.T. held that it was desirable to pay compensation to workers for the period for which they were likely to remain unemployed even if retrenchment was justified. (6-11-51, 1952 I LLJ 199) In *Vishwamitra Press, v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) said that it was *prima facie* the management's right to determine the labour force provided the retrenchment was not effected by extraneous or improper motives. The L.A.T. found that retrenchment in some cases was not *bona fide* and it ordered reinstatement. In other cases of retrenchment, it directed payment of one month's total emoluments for the period of idleness. (17-11-51, 1952 I LLJ 181)

In *Presidency Jute Mills Co., Ltd. v. Presidency Jute Mills Company Employees' Union*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) said that workmen, on retrenchment, were entitled to compensation for the loss of employment for no fault of theirs, in addition to 15 days' pay in lieu of notice. In determining the amount of compensation, various factors had to be taken into consideration, such as length of service, causes of retrenchment and the ability of the concern to pay. The L.A.T. awarded compensation ranging from 15 days' to 3 months' total emoluments for different qualifying periods of service. (2-1-52, 1952 I LLJ 796) This view was reiterated in *Shankar Sugar Mills, Deoria, v. Shankar Mazdoor Sangh*, (15-7-52, 1952 II LLJ 632)

In *Bharat Bank Ltd. v. Certain ex-Employees*, the L.A.T. (at Allahabad, Shri Mathur and Shri Ghulam Hasan) held that there was nothing to prohibit the grant of compensation, besides notice pay, on retrenchment; and that it was but proper that when an employee was thrown out of job for no fault of his own, he should be granted some compensation to carry on until he could find another job; that the compensation granted in the instant case (half a month's salary plus allowances for each completed year of service) was not excessive. (1-8-52, 1952 II LLJ 420)

In *Air-India Ltd. v. Their Workmen*, the L.A.T. (Madras Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) reviewed at length the working of the company and observed that the company was overstaffed and had a high wage structure resulting in financial deterioration, that the only flexible

item in the expenses was the salary bill which had to be pruned to bring the expenses of the company within the standard cost set by the Air Transport Enquiry Committee and that therefore the retrenchment effected by the company was justified by necessity. The L.A.T. further held that the stoppage of increments also was justified in view of the financial condition of the company and was in accordance with the provisions laid down in the conditions of service to the effect that increments were dependent on business conditions and the conduct and ability of the employee. (8-8-52, 1952 II LLJ 454)

In *New Partap Spinning and Manufacturing Co., Ltd., Dhulia v. Rashtriya Mill Mazdoor Sangh, Dhulia*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) allowed compensation for loss of wages due to poor quality of materials. (2-3-51, 1951 I LLJ 645) In *Ramchand Lakshmandas Ice Factory, Bareilly v. Ice Factory Workers' Union, Bareilly*, the L.A.T. (Lucknow Bench, Shri Majumdar and Shri Mitter) ruled that if workmen were prevented from attending to duty due to circumstances beyond the control of the employer (e.g., curfew) they could not claim wages for that period. (14-7-51, 1951 II LLJ 486)

#### GRATUITY

In *Army and Navy Stores Ltd., Bombay v. Their Workmen*, cited earlier, the L.A.T. held that since the profits of the company had been dwindling since 1947, there was no scope for awarding a month's wages as gratuity for each year of service and it accordingly ordered reduction of the same to a half month's in accordance with the scheme of the Government of India in the matter. (13-4-51, 1951 II LLJ 31)

In *Metal Mazdoor Sabha v. Oriental Metal Pressing Works*, the L.A.T. ruled that the contention that other similar concerns had no gratuity schemes was not valid for refusing the grant of a gratuity scheme, justified by the extent of the company's business. (18-5-51, 1951 II LLJ 30)

In *Arthur Butler & Co. (Muzaffarpur), Ltd. v. Arthur Butler Workers' Union*, the L.A.T. (Shri Majumdar and Shri Mitter) held that the general financial stability of the concern must be taken into consideration before a long-term scheme, like a scheme of gratuity, could be sanctioned. (19-6-51, 1952 II LLJ 29)

In *Larsen and Toubro Ltd., Bombay v. Their Workmen*, cited earlier, the L.A.T. said that in the existing conditions provident fund itself provided in most cases only insufficient relief in the emergencies to which the employee might be exposed in the course of his life or which his family might have to face on his death. The L.A.T. therefore held that it would be appropriate that two retirement benefits—provident fund and gratuity—should be provided where the finances of the concern so permitted. (22-6-51, 1951 II LLJ 221)

In *French Motor Company, Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Mathur) rejected the workmen's claim for re-opening the question of gratuity in face of better terms given in some other awards, and ruled that schemes of gratuity were matters of long-term

planning and they should not be disturbed unless they had been tried for a sufficiently long time. (1-10-51, 1952 I LLJ 31)

In *Tata Oil Mills Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) held that in view of substantial rate of provident fund (i.e. 8½%), a gratuity scheme of one-half month's wage for each year of service was satisfactory and that a workman should not be entitled to gratuity if dismissed for gross misconduct. (23-10-51, 1952 I LLJ 35)

In *Saran Engineering Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Majumdar and Shri Mitter) reiterated that where the financial conditions of the concern allowed it, both gratuity and provident fund schemes might exist side by side. (23-6-52, 1953 I LLJ 64)

In *Indian Hume Pipe Co., Ltd. v. Their Workmen*, the L.A.T. (Shri Lakshmana Rao and Shri Jeejeebhoy) said that there was no reason to interfere with the grant of gratuity as a long-term arrangement, when the concern was on a sound footing. (19-5-52, 1952 II LLJ 39) This view was repeated in the dispute between *Dalmia Cement Co., Ltd., Dalmianagar*, and their workers. (8-8-52, 1952 II LLJ 451)

In *General Assurance Society Ltd., Calcutta v. Their Employees (General Department)*, the L.A.T. (Shri Mitter and Shri Mathur) held that the lower tribunal was right in awarding a scheme of gratuity in addition to the contributory provident fund scheme which already existed, as gratuity would afford additional relief in case of those who were to die or retire after short service with meagre provident fund benefits. (1952 LAC 124)

#### DEFINITION OF THE WORKMAN

##### SUPERVISORY PERSONNEL

In *Sri W.C. Raymond v. Ford Motor Company of India, Ltd., Bombay*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Lokur) decided that a person with work of supervisory nature (e.g., foreman) was not a workman under the Industrial Disputes Act. (19-11-50, 1951 I LLJ 167) A similar view (Shri Lakshmana Rao and Shri Jeejeebhoy) was expressed in *Fertilizers and Chemicals Travancore Ltd.*, cited earlier. (23-4-51, 1951 II LLJ 211) In *Simpson Co., Ltd., v. Martin*, the L.A.T. ruled that a foreman was not a workman. (1-5-51, 1951 II LLJ 43)

In the dispute between *Bharat Bank Ltd.* and its certain ex-employees, the L.A.T. (at Allahabad, Shri Mathur and Shri Ghulam Hasan) held that the head cashier, the assistant manager and the accountants were workmen. (1-8-52, 1952 II LLJ 420)

## APPENDIX—II

### IMPORTANT L.A.T. AWARDS DURING NOVEMBER 1952—JULY 1954

#### BONUS

##### (a) THE NATURE OF BONUS AND AVAILABILITY OF SURPLUS

In *M/s Narondas Manordas (Precious Metal Refinery) v. Their Workmen*, the State tribunal had awarded one month's wages as bonus, although the company's accounts showed a loss, on the ground that the company had paid bonus for several consecutive years and this practice amounted to a custom. The L.A.T. (Bombay Bench, Shri F. Jeejeebhoy and Shri M. Waliullah) reversed the decision of the State tribunal, observing that there "can be no question of a custom to pay bonus..., for the grant of bonus to workmen is intended to enable them to participate in the prosperity of a concern in a relevant year." (29-1-53, 1953 I LLJ 360)

In *Burmah-Shell Oil Storage and Distributing Co. of India, Ltd., Madras v. Their Employees*, the L.A.T. (Lucknow Bench, Shri L.K. Jha and Shri Waliullah) refused to re-open the question of bonus for the years 1947, 1948 and 1949, as it had already been settled and it could not be allowed to be reviewed simply because some other tribunals in Bombay and Madras had subsequently awarded bonus at a higher rate for those years. (16-4-53, 1954 I LLJ 21)

In *Press Employees' Association, Calcutta v. The Statesman Ltd., Calcutta*, the L.A.T. (Calcutta Bench, Shri J.N. Majumdar and Shri R.C. Mitter) held that the company having incurred a substantial loss in the years in question, no claim for bonus could be granted unless the workmen had made out that bonus was payable, irrespective of loss, as an express or implied condition of service. Admittedly, there were no Standing Orders for the payment of bonus for the company in question, nor there was any express agreement to pay bonus irrespective of profit or loss. As the payment of bonus in the past was only a gesture of good will and was dependent upon the trading results of the year, no implied condition could be inferred for the payment of bonus even for years in which the company had incurred loss. The claim for bonus was therefore negatived. (15-9-53, 1954 I LLJ 167)

In *Union Drug Co., Ltd., Calcutta v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Mitter and Shri K.S. Campbell-Puri) ruled that the claim for bonus could also be based on an agreement to pay it irrespective of profits, as a condition of service. That agreement might be either express or implied; and where not express, past practice might lead to an inference of implied agreement. The practice must, however, be unbroken and should have continued for an appreciably long period to exclude the hypothesis of the payments being ~~on gratia or out of bounty~~ (1-12-53, 1954 I LLJ 766)

## (b) CALCULATION OF THE AVAILABLE SURPLUS

In *Delhi Iron Works Ltd. v. Their Workmen*, the L.A.T. (Shri Majumdar and Shri Mitter) pointed out that the statement filed by the company showed that by far the greater quantity of the company's produce had been sold to the sister concerns at prices lower than the market prices and that the profits of the company had been deliberately understated and the expenditure inflated. It confirmed the award of the lower tribunal, granting bonus at the rate of one month's pay for the years in question. (5-12-52, 1953 I LLJ 274)

In *Calcutta Tramways Co., Ltd. v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) held that capital expenditure ought not to be met from the current revenue and that the amount set apart from the revenues of the year 1950 for the purpose was too high. The L.A.T. allowed an additional bonus of one month's basic wages. (6-11-52, 1953 I LLJ 81)

In the dispute concerning *Swastik Oil Mills Ltd.* and their workmen, the industrial tribunal had refused to enhance the bonus of one month's basic wages paid by the concern. On appeal, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Waliullah) increased it to 1/8th of annual basic earnings on the ground that the surplus for distributing bonus would be larger if the contribution towards gratuity fund (which did not exist) and separate sums for rehabilitation and replacement (already fully covered by provision for statutory depreciation) were not deducted from gross profits. The L.A.T. reiterated that a concern was entitled to legitimate reserves for rehabilitation and replacement of machinery and buildings provided the amount found necessary for the purpose exceeded the statutory depreciation of the year. The L.A.T. rejected the method of calculating additional reserves for rehabilitation and replacement by splitting up depreciation and setting off the rehabilitation against each of the split-up items on the basis of like with like. (4-3-53, 1953 I LLJ 468)

In *Army and Navy Stores Ltd., Bombay v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Waliullah) held that having regard to the nature of business of a departmental store and the element of risk involved, a return of 8% on capital employed might be admissible. It, however, awarded only 6%, as the full facts of the case were not available. (4-3-53, 1953 I LLJ 594)

In *Bihar Firebricks & Potteries Ltd., Manbhum v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) set aside the award of the industrial tribunal (giving bonus of 12 days' wages on the basis of 6% dividend paid by the concern) on the ground that after allowing for rehabilitation reserves no surplus was available for bonus. (9-3-53, 1953 I LLJ 587)

In *Madras Press Labour Union, Madras v. Artisan Press Ltd., Madras*, the L.A.T. (Madras Bench, Shri Jha and Shri Waliullah) said that where the transfer of the business carried on hitherto by a firm of partners to the newly formed limited company clearly showed that all the debts and liabilities of the partnership business were taken over by the new company, it must be held that the liability for payment of bonus for the two years prior to the taking over by the company was also taken over by the new company, and the claim

for such bonus against the new company was sustainable. Six per cent interest per annum on the capital invested in the company must be allowed by way of deductions from the net profits in arriving at the available surplus for distribution of bonus. Once the surplus profits had been ascertained (after deducting all permissible deductions from the net profits) there could be no justification whatsoever for granting the entire surplus profit to the workers, leaving nothing to be carried over to the next year. It was held in the circumstances of the case that grant of 10 per cent of the annual basic earnings for the year 1949 and 20 per cent for the year 1950 as bonus was proper and adequate. (25-5-53, 1953 II LLJ 504)

In *Niranjan Cinema, Allahabad v. Its Workmen*, the L.A.T. (Lucknow Bench, Shri Majumdar and Shri Waliullah) awarded a month's basic wages as bonus on the basis of materials furnished by the workers before the Tribunal and rejected the rough copy of the balance-sheet filed by the management. (29-7-53, 1953 II LLJ 867)

In *Textile Workers' Union, Lucknow v. Sri Vikram Cotton Mills Ltd.*, the L.A.T. (Lucknow Bench, Shri Jha and Shri Waliullah) held that the onus was always upon the workmen to make out a case for bonus. When the amount for rehabilitation reserve, worked out as per the available surplus formula, was greater than the amount provided by the company in its account books, the company was entitled to deduct the higher amount as rehabilitation reserve from the gross profit in determining the surplus available for distribution of bonus. (13-8-53, 1953 II LLJ 858)

In *Bengal Chemical and Pharmaceutical Works Ltd. v. Their Workmen*, the L.A.T. (Shri Mitter and Shri Campbell-Puri) ruled that in computing the replacement reserve for buildings and machinery, distinction must be made between the cost of replacement of buildings and machinery set up before 1939 and buildings and machinery set up thereafter. The reserve for replacements of the buildings and machinery set up after 1939 should be based on the actual cost only. The amount of rehabilitation was calculated by deducting depreciation reserves, etc. from the replacement costs of the block. The L.A.T. also held that in allowing for income-tax, the tax payable and not the tax actually paid should be taken into account. (7-12-53, VI FJR 590).

In *Chemical Mazdoor Sabha v. Eastern Chemical Co. (India), Ltd. and others*, the L.A.T. (Bombay Bench, Shri B.B. Prasad and Shri Campbell-Puri) held that it was true that, according to the principles laid down for ascertaining the available surplus for purposes of granting bonus, the prior charges were meant to make provision for reasonable return on capital invested in the concern and for depreciation but this did not mean that when in any year huge profits had been made then that should be applied entirely towards meeting the arrears of depreciation and dividends. Provision for arrears of depreciation and dividends on preference shares should be gradually made, so that labour too might share in the rise in profits. The company's claim to deduct from the gross profits for the year in question the entire arrears of depreciation and dividend on share capital in the circumstances must be rejected. (17-2-54, 1954 I LLJ 817)

In *Bihar Sugar Mills v. Their Workmen*, the L.A.T. (Calcutta Bench,

Shri Mitter and Shri S.N. Modak) said that the Full Bench had laid down certain principles, but, as was subsequently explained in *Ganesh Flour Mills case* (1952 I LLJ 524), "it did not lay down a general formula applicable to each and every industry and for the purpose of sustaining a claim under that head there must be *positive evidence* to show (a) the age of the machinery, (b) the cost of replacement, (c) the period during which it would require replacement, (d) the price of machineries to be bought for replacement, (e) the amount standing in the depreciation and reserve funds, and (f) to what extent the funds at the disposal of the industry would meet the cost of replacement..." The L.A.T. added, "We are unable on the materials on the record to form even a rough estimate of the additional costs which would be required per year for rehabilitation in excess of depreciation given, which is, as we have already said, at income-tax rates on the written-down values of the blocks." (24-2-54, 1954 LAC 168)

In *Hindustan General Industries Ltd. v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri T.V. Thadani) stayed the implementation of the award of the lower court granting bonus on the basis of future prospects of profits, as such a basis was against the Full Bench Formula. (15-3-54, 1954 II LLJ 45)

In *Indian Vegetable Products Workers' Union v. Indian Vegetable Products Ltd. and others*, the L.A.T. (Bombay Bench, Shri Prasad and Shri Campbell-Puri) held that while determining the available surplus, provision for taxation on the net profit without deducting the amount claimed as bonus must be made. The L.A.T. noted, "...for taxation Rs...only have been allowed by the appellant on the ground that taxes payable on bonus equivalent to four months' basic wages should not be calculated. In determining bonus according to the principles laid down by the Full Bench of this Tribunal in the *Millowners' Association, Bombay v. R.M.M.S.* (1950 II LLJ 1247) such a course was not adopted. We have to determine the surplus profits after deducting the prior charges including taxes on net profits." The L.A.T. added that there was no hard-and-fast rule that in every case only 4 per cent dividend should be allowed on the paid-up capital in the form of bonus shares. When in earlier adjudication proceedings between the parties relating to demand for bonus 6 per cent return on bonus shares had been allowed, the same return on the bonus shares must be allowed for the year in question also. (14-4-54, 1954 II LLJ 441)

In *Singh Plate Mills Ltd. v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri Prasad) held that claim for return on amounts representing undischarged liabilities on the ground that it formed part of working capital must be rejected. The L.A.T. said that it was well established that in computing available surplus for distribution of bonus, the profit of the year in question should be found out and the claim for bonus should not be nullified completely by setting off the profit of the year against the losses in the previous years. The loss of previous years must be kept in view in fixing the amount of bonus but not so as to defeat completely the claim for it. Bonus should be in terms of basic wages and not total earnings, i.e., basic wages plus dearness allowances. (21-6-54, 1954 II LLJ 461)

In *Indian Oxygen and Acetylene Co., Ltd. v. Their Workmen*, the L.A.T.

(Bombay Bench, Shri D.E. Reuben and Shri Campbell-Puri) ruled that for the sake of workmen as much as for the sake of the employers it was desirable that the business should continue and expand, which could be achieved by ploughing back the profits. The ploughing back of profits would be discouraged if the shareholders were not secure of a fair return. The L.A.T. allowed fair return of 5 per cent on the paid-up capital, which partly consisted of bonus shares. The L.A.T. noted that in *Ganesh Flour Mills Company v. Their Workmen* (1952 I LLJ 524), where the bonus shares comprised 91 per cent of the share capital, the L.A.T. (at Allahabad, Shri Mitter and Shri G.P. Mathur) had awarded 4% return on them, but "in the instant case the proportion is nowhere near as high as this and that case is, therefore, no authority for allowing as low a return as 4 per cent here."

The L.A.T. added that the company was entitled to invest reserves which were not immediately required for the purpose for which they had been appropriated and if the reserves were employed in the business an adequate return, bearing some relation to the interest at which loans were available in the market, must be allowed. In the circumstances 4 per cent return must be allowed on the reserves employed as working capital. (17-6-54, 1954 II LLJ 54)

In *Nellimara Jute Mills Co., Ltd., Chittavalsa Jute Mills Co., Ltd. v. Their Workmen*, the Appellate Tribunal (Calcutta Bench, Shri Majumdar and Shri Mitter) reduced the quantum of bonus awarded by the lower court on the ground that 'extraneous' profits accruing from high jute prices should not be taken into account in calculating the available surplus. The L.A.T. added that the liquid assets (such as excess profit tax refunds, cash in transit and investments of securities, etc.) should be deducted from the total cost of rehabilitation in order to arrive at the net cost of rehabilitation within the meaning of available surplus Formula. (26-6-53, 1953 II LLJ 512) In *Minakshi Mills Ltd., Madurai and Manapparai v. Their Workmen*, the Appellate Tribunal (Madras Bench, Shri Jha and Shri Waliullah) decided that the amount earned as interest on investment in fixed deposits and shares was unrelated to the employees' efforts and as such the workmen could not claim any share of it. The L.A.T., however, allowed the inclusion of the amount on the ground that the concern had deducted interest on loans from the profits. The L.A.T. further ruled that the onus of proving the heavy expenditure on repairs of machinery, to be debited against revenue, lay on the management. In the absence of vouchers and where in spite of repeated attempts by the union opportunity to inspection of relevant documents to test the accuracy of the statement was denied, the entry in the balance-sheet in regard to repairs could not be accepted in toto. (1953 II LLJ 520) In *Greaves Cotton & Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy, Shri Reuben and Shri Prasad) reduced the bonus from 6 to 5 months' basic wages on the ground that earnings from sale of immovable property, shipping agency work, direct sales commission, which had been taken into account by the lower tribunal for determining available surplus, were 'extraneous' profits, and workers had not contributed to them. (18-6-54, 1954 II LLJ 185) In another dispute between *Greaves Cotton and Company, Ltd.* and their workmen, the L.A.T. (Shri Jeejeebhoy, Shri Reuben

and Shri Prasad) upheld the workers' claim for a share in surplus profits arising out of the money invested by the company in the shares of some other concerns, on the plea that the workmen had contributed towards the income from investments (made to protect or extend the main business of the concern) by dealing with correspondence and keeping accounts relating to that part of the business. It was further held that the profit arising from the sale of the building was in the nature of a capital gain and it should therefore be excluded in ascertaining the available surplus, as an extraneous profit. (18-6-54, 1954 II LLJ 180)

#### (c) THE QUANTUM OF BONUS

In *Standard Vacuum Oil Co. and two others v. Their Employees*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) noted: "As the companies are not manufacturing concerns and each one of them stores, distributes and sells oil and petroleum products in other countries as well and as the accounts kept by each were one consolidated account in respect of the entire *locus* of its operations, it is not possible to proceed on the actual formula on which the amount of bonus was determined in the case of *Mill-owners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh, Bombay*. The only method that can be followed is to make up the gap towards living wages even though partially. We have already stated that it is not possible to find out exactly what in terms of money is that gap, for the materials on the record for finding out the quantum of living wages of the different categories of workmen concerned in these cases are scanty. Only a rough and ready method is possible and that is all that is required, for it is not essential that the whole of that gap is to be filled by the award of bonus; for 'bonus is to be looked upon', as the Full Bench of this Tribunal had observed in the *Bombay Millowners' Association case*, 'as the temporary satisfaction, wholly or in part, of the needs of the employee'. With these general observations we will now proceed to assess the amount." (29-5-53, 1954 I LLJ 484)

In *Minakshi Mills Ltd., Madurai and Manapparai*, cited earlier, the L.A.T. confirmed the award of 3 months' basic wages as bonus, which came to 61% of the available surplus (Rs. 1,80,000 out of Rs. 2,57,496). (1953 II LLJ 520)

In *Assam Oil Company Labour Union and another v. Assam Oil Company, Ltd.*, the L.A.T. (Calcutta Bench, Shri Mitter and Shri Jha) ruled, "As the liability to pay bonus and the amount thereof for a particular year would depend upon the trading profits of that year a general claim for bonus for years to come cannot be entertained." The L.A.T. held that the amount of bonus paid by a highly prosperous concern should not be violently out of proportion to the general bonus level to avoid repercussion and emergence of problems in the vicinity. The L.A.T. allowed a bonus equal to 3 months' basic wages though the available profits could bear the burden of bonus of 5 months' wages. (8-6-54, 1954 LAC 543)

In *Greaves Cotton and Company, Ltd. v. Their Workmen*, cited above, the L.A.T. reiterated that care must be taken to see that the bonus which was given to workers to share in the prosperity and the living wages was not so excessive as to create fresh problems in the vicinity or in the industry,

to upset emoluments all round, and to lead to industrial discontent and the possible emergence of a privileged class. Furthermore, one must not be unmindful of the impact of an unduly high bonus on the community as a whole. In determining bonus, the existing scale of wages to the workmen must be taken into account, as also other facilities such as medical relief, education for children of the workmen, provident fund, gratuity, pension scheme, free tea and provision of foodgrains at concessional rates. (18-6-54, 1954 II LLJ 185)

**(d) WHETHER BONUS SHOULD BE UNIT-WISE OR INDUSTRY-WISE**

In the dispute concerning bonus for the years 1950 and 1951, between *Standard Vacuum, Caltex and Burmah-Shell Oil Companies, Bombay* and their employees, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) awarded to workers, including clerical staff, bonus equivalent to one-fourth of the total basic earnings on the ground that they were not receiving a living wage. The bonus was determined on an industry-cum-region basis, considering that conditions and cost of living differed from place to place. (19-5-53, 1954 I LLJ 484)

In *Burmah-Shell, etc. Oil Companies in Madras v. Their Employees*, the L.A.T. (Lucknow Bench, Shri Jha and Shri Waliullah) said that bonus in oil companies should be determined on industry-cum-region basis in view of differences in conditions and cost of living. (24-2-54, 1954 I LLJ 782)

**(e) BONUS IN BRANCHES OF PARENT CONCERN**

In *Minakshi Mills Ltd., Madurai and Manapparai v. Their Workmen*, cited earlier, the L.A.T. held, "Where the management for both the mills is the same and the money that is required for the purpose of the two mills is taken from a common pool and the two mills did the same business and the policy in respect of sale, purchase, capital and expenditure is formulated on the basis of the company as a whole, it must be held that the two mills are integral parts of one and the same unit and must be dealt with as one for the purpose of bonus to be paid to the workers employed in both the mills." (1953 II LLJ 520)

In *Greaves Cotton & Co., Ltd. v. Their Workmen*, cited earlier, the L.A.T. turned down the demand of the company that in view of the difficulties in the transfer of the profits on its investments in Pakistan, they should not be included in determining the available surplus, as there was no reason to think that such a transfer would be delayed. The L.A.T. also ruled that when the company had a foreign branch to purchase and arrange shipment of its requirements, profits by such branch for arranging shipment to customers other than the company must also be taken into consideration for determining available surplus, as such profits arose from an activity subsidiary to the company's main business and therefore must be held to be its trading profit. (18-6-54, 1954 II LLJ 180)

In *Shaparia Dock and Steel Co. v. Their Workers*, the L.A.T. (Bombay Bench, Shri Reuben and Shri Campbell-Puri) held that where a company running a factory was also running an agency department for importing and selling goods and no distinction between the profits of the agency department and the factory was made in the balance-sheet of the company, the profit

from the agency department must be taken into consideration for determining the quantum of bonus to the workmen employed by the company in the factory. (12-7-54, 1954 II LLJ 208)

**(f) CALCULATION OF BONUS ON BASIC WAGES**

In *National Tobacco Co. of India, Ltd. v. Their Workmen*, the L.A.T. (Shri Jha and Shri Waliullah) observed as follows: "The amount of bonus awarded by the lower tribunal at the rate of one-fifth of the earned wages for 1949 comes to about Rs. 20,000 (if only basic wages were deemed to be included in the expression 'earned wages' by the tribunal). If, however, dearness allowance be also added to the basic wages and then one-fifth of the earned emoluments for 1949 be calculated, the amount would be Rs. 45,000. Out of the surplus profit for the year the amount of bonus can be easily paid." The L.A.T. clarified that in the year 1949 for which bonus had been granted "the total daily wage paid to a worker amounted to Rs. 1.12 per day, without any specification whether any portion of the same represented dearness allowance." (22-5-53, V FJR 421)

In *Burmah-Shell Oil Storage and Distributing Company of India, Ltd., Bombay and two others*, the L.A.T. observed: "It has hitherto been the general practice to divide 'the available surplus' given as bonus in terms of basic wages, and the Labour Appellate Tribunal has confirmed such practice except in one case where the basic wages were too low." The L.A.T. ruled that the wage differentials represented as between the workmen *per se* a more correct measure of the value of the work that they did for the purpose of distributing bonus and the wiser method of distributing the 'available surplus' was to apply multiples based on wage differentials, in other words, on the basic wages. A uniform principle of bonus in terms of basic wages would avoid many an anomaly and that should be the practice. (25-5-53, 1953 II LLJ 246)

**(g) CATEGORY OF WORKERS ENTITLED TO BONUS**

In *Burmah-Shell Oil Storage and Distributing Company of India, Ltd., Bombay and two others*, cited above, the Appellate Tribunal did not agree with the contention of the concerns that the Full Bench Formula did not apply to them as they were commercial (and not manufacturing) undertakings. The L.A.T. noted, "The labourers here do not make as much contribution to the profits of the year as the labourers of concerns like the textile mills, and this is a factor which we cannot altogether overlook, for the sphere of activity of the labourers in these oil companies is confined to storage, distribution and marketing of petrol and similar products. In the case of clerks they have a comparatively higher scale of wages, and it would be just in such circumstances that the workmen should get a little higher scale of bonus than the clerks. In the matter of distribution of bonus the need of the low paid workmen for supplementing their income through bonus is greater, but as a uniform rate of bonus amongst operatives is desirable for many reasons the rate so determined must apply to all operatives working in the same concern." (25-5-53, 1953 II LLJ 246)

In *Standard Vacuum Oil Co., Burmah-Shell Oil Storage and Distributing Company, and Caltex (India), Ltd. v. Their Employees*, the L.A.T. (Calcutta

Bench, Shri Majumdar and Shri Mitter) said: "The workmen including the clerical staff employed by the oil distributing companies contribute towards production. It may be that the contribution of workmen so employed may not be the same as of the workers employed in oil fields and refineries but they were also entitled to bonus." (29-5-53, 1954 I LLJ 484)

In *Minakshi Mills Ltd., Madurai and Manapparai v. Their Workmen*, cited earlier, the L.A.T. (Madras Bench, Shri Jha and Shri Waliullah) said that where the company had paid three months' basic wages as bonus for the year in question to one section of the workmen, i.e., the clerical staff, and denied bonus to the other workmen, i.e., non-clerical staff, on the plea of the absence of available surplus, it must be held that the invidious distinction shown by the company would have serious repercussions on the harmonious relations between the management and the labour and might affect the industrial peace. (1953 II LLJ 520)

In *Workmen of Rohtas Industries Ltd. v. Messrs Rohtas Industries Ltd., Dalmianagar*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) ruled that when the question of bonus was in dispute it was essential for the purpose of maintaining industrial peace amongst workmen that bonus should be awarded at the same rate to the same category of workmen working at the same place under the same employer and in the same industry. (9-9-53, 1953 LAC 723)

In *Workers of Kanan Devan Hills Produce Co., Ltd. v. Kanan Devan Hills Produce Co., Ltd.*, the L.A.T. (Shri Jha and Shri Waliullah) ruled that the management was not justified in making the distinction between two sets of their employees for the payment of bonus and that if at all a discrimination was made, the working class whose needs were greater should have got a higher rate of bonus than the clerical staff. The management had awarded to their clerical staff a bonus of 5 months' basic wages and to the workmen a bonus of  $2\frac{1}{2}$  months' basic wages. The L.A.T. also ruled that there was no justification for awarding dearness allowance to fully neutralise the rise in the cost of living; it confirmed the award which neutralised the cost of living to the extent of 66%. (2-12-53, VI FJR 46)

In *Burmah-Shell, etc. Oil Companies in Madras v. Their Employees*, cited earlier, the L.A.T. said that as there was a big gap between the standard of living wages at 334 points (the cost of living index number in the year in question) and the consolidated wages of the clerical and non-clerical or service staff of the companies despite the retirement and other benefits given by the companies, and as there was, unlike in the case of clerical and service staff employed in the Calcutta and Bombay branches of the concerns, no substantial difference between the consolidated wages of the clerical staff and the service staff, there was no justification in awarding different rates of bonus to the two categories of employees concerned. (24-2-54, 1954 I LLJ 782)

In *Bihar Sugar Mills v. Their Workmen*, cited earlier, the L.A.T. reaffirmed that bonus in the case of sugar mills of Bihar should be determined on an industry-wise basis. The fact that separate references, each in respect of one unit, had been made could not justify a departure from past practice regarding the question whether bonus was to be determined on a unit-wise or industry-wise basis. Ever since 1947 when bonus was linked

with production, calculations had proceeded on the whole quantity of sugar produced according to the rate applicable to the particular slab. No case had been made out by the industry for departing from that method of calculation. The L.A.T. added, "The employers contend that if the whole available surplus be distributed amongst workmen an additional burden would be thrown upon the employers who would of necessity have to pay bonus to non-workmen also for the sake of maintaining industrial peace. This argument proceeds on the basis that the whole of the available surplus would be eaten up in the payment of bonus to the workmen at the above rates. That assumption is entirely unfounded. We have fixed the rates at a comparatively lower level to mitigate the hardship on marginal units and in considering the question of bonus for workmen we have taken out only a portion of the available surplus. We cannot, therefore, accept this contention of the employers." (24-2-54, 1954 LAC 168)

(h) WORKERS' SHARE IN RESERVES AND  
LINKING OF BONUS TO DIVIDENDS

In *Indian Vegetable Products Ltd., Bombay v. Their Workmen and two others*, the L.A.T. (Bombay Bench, Shri Prasad and Shri Campbell-Puri) turned down the demand of the workers for bonus on the ground that, though a certain amount transferred from the "Dividend Equalisation Fund" had been distributed as dividend, there was no surplus left after deducting prior charges from the gross profits. The L.A.T. opined that it would be contrary to the Full Bench Formula if the dividend paid from the "Fund" in a lean year, earmarked for the purpose, also entitled to workmen to a like amount of bonus. (31-3-54, 1954 II LLJ 205)

## WAGES

In *Burmah-Shell Oil Co., and two others v. Their Employees*, the Appellate Tribunal (Madras Bench, Shri Jha and Shri Waliullah) rejected a plea for stabilising basic wages for unskilled workers at the cost of living index 170 (with 1939 as base) on the ground that such a step would lead to anomalies and consequent industrial unrest when the general wage structure obtaining in Madras was based on the index 1939-100. (15-5-53, 1953 II LLJ 236)

In *Burmah-Shell Oil Storage and Distributing Co. of India, Ltd., Bombay, and two others*, cited earlier, the L.A.T. ruled that adding of dearness allowance to basic wages for purposes of bonus would disturb the wage differentials. (25-5-53, 1953 II LLJ 246)

In *Warrangal Municipality v. Their Workmen*, the L.A.T. (Bombay Bench, Shri S.P. Sastri and Shri Campbell-Puri) held that the fact that plenty of labour was available for service on lower scale of wages was not a relevant factor to be taken into account in fixing the minimum basic wages. The fact that the employer was a municipality which was not a profit-making concern was not a ground to reduce the minimum wages to less than Rs. 26 per mensem. So long as the municipality's financial resources were not inadequate to pay it the minimum wages must be fixed at Rs. 26 per mensem. (3-9-53, 1953 II LLJ 495)

In *Phaltan, etc., Sugar Mills, Bombay State v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Prasad and Shri Campbell-Puri) held that all the elementary requirements of a worker were the same whether he was working in the textile or in the sugar industry. So, reference by way of comparison to minimum wages fixed under industrial awards for the labour employed in the textile industry in the State for determining the minimum wages payable to the workmen concerned must be held to be justified. The L.A.T. further ruled that no difference ought to be made between factory workmen and other employees employed by sugar mills in so far as the payment of minimum basic wages was concerned as the minimum needs of both were the same. Similarly, no distinction in the matter of minimum basic wages between male and female workers was justified when both did the same kind of work and both worked for the same number of hours. (28-4-54, 1954 II LLJ 341)

#### DEARNESS ALLOWANCE

In *Tata Oil Mills Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lakshmana Rao and Shri Jeejeebhoy) said that where the facts justified it, a higher dearness allowance should be granted for neutralising the increase in the cost of living satisfactorily. The Appellate Tribunal observed: "...the grant of little token advances without any justification is unfortunate in the interests of industrial relations. Giving for the sake of giving in effect amounts to this that whenever a case is referred to adjudication, reasons must be found to give a 'token increase'; and that to our mind has an unsettling effect upon labour, for they restlessly await the expiry of the period during which an award is in operation in order to make fresh claims, confident in the expectation that some little 'token' advance would always be forthcoming." (16-10-52, 1952 II LLJ 814)

In *Star Paper Mills Ltd., Saharanpur v. Star Paper Mills Workers' Union*, the L.A.T. (Madras Bench, Shri Mathur and Shri Jha) decided that it was not advisable or desirable to change the long-term arrangements concerning dearness allowance rates at short intervals and that the prosperity of the concern in one particular year could be no basis for changing the scale of dearness allowance as there was no guarantee that the prosperity would continue. (24-11-52, 1953 I LLJ 246)

In *Standard Vacuum Employees' Union v. Standard Vacuum Oil Co., Madras*, the L.A.T. (Madras Bench, Shri Mathur and Shri Jha) held that there was no reason why the employees of the company should not be paid the same scale of dearness allowance as was prevailing in the sister company of Burmah-Shell and awarded rates of dearness allowance on the same basis. (5-12-52, 1953 I LLJ 236)

In *Woollen Mills Mazdoor Sabha v. Sri Dinesh Woollen Mills Ltd.*, where, in view of losses sustained in successive years, the company desired to reduce the existing rate of dearness allowance on the ground that it was unable to maintain the existing wage structure and could not be expected to work at a loss, the industrial court after enquiring into the matter slightly lowered the existing rate with the result that both the parties filed appeals before

the Appellate Tribunal. The L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Sastry) observed that, although it would not be fair to make a sharp and sudden reduction in dearness allowance as suggested by the employers, the employers' claim could not be denied. It held that the relief given by the tribunal would not have any substantial effect for the company and ordered a further reduction in the rate of dearness allowance. (23-4-53, 1953 II LLJ 44)

In *Madras Press Labour Union, Madras v. Artisan Press Ltd., Madras*, the L.A.T. (Madras Bench, Shri Jha and Shri Waliullah) ruled that, as held by the Rao Court of Inquiry, simplicity and uniformity dictated a single rate of dearness allowance to all workers, irrespective of their wages, and held that a flat rate of Rs. 30 per mensem for the workers was adequate and proper. (25-5-53, 1953 II LLJ 504)

In *Nellimara Jute Mills Ltd. and another v. Their Workmen*, the Appellate Tribunal (Calcutta Bench, Shri Majumdar and Shri Mitter) stated, "We think that the rate fixed by the tribunal is reasonable, for it still leaves about 34 per cent burden of the higher cost of living on the workmen". (26-6-53, 1953 II LLJ 512)

In *Associated Cement Companies Ltd., and Sevalia Cement Works v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Sastry), negating the contention that for the purpose of ascertaining the correct dearness allowance of a concern comparison should be made only with similar concerns in the vicinity and for ascertaining the dearness allowance in a cement factory standard of dearness allowance in textile mills or a dairy could not be applied, held that the main consideration so far as dearness allowance was concerned was neutralisation of the rise in the cost of living and it did not matter if the dearness allowance paid in any or all the industries in the area was taken into consideration for ascertaining the amount of dearness allowance in a cement factory. The dearness allowance paid in all the other concerns was after all a reflection of (a) the capacity of the concern to pay and (b) the necessity for such payment having regard to rise in the cost of living. (21-9-53, 1953 II LLJ 845)

#### DEFINITION OF THE WORKMAN

In *Jaswant Sugar Mills Ltd. v. Sri D. Smith*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri Thadani) held that members of the watch and ward and fire-fighting staff were not workmen under the Industrial Disputes Act. (31-3-54, 1954 II LLJ 337) In *East Asiatic Company Staff Union v. East Asiatic Co. (India), Ltd.*, the L.A.T. (Madras Bench, Shri Waliullah and Shri Prasad) held that the duties of the employee, who had the designation of a draughtsman, were those of a skilled clerical worker and that he was, therefore, a workman as defined in the Industrial Disputes Act, 1947. (2-8-54, 1954 II LLJ 730)

#### DISMISSAL AND REINSTATEMENT

In *Cement Marketing Co. of India, Ltd. v. Their Employees*, the L.A.T.

(Calcutta Bench, Shri Majumdar and Shri Mitter) set aside the award of reinstatement on the ground that the discharge of the employee had not been actuated by bad faith. (9-12-52, 1953 I LLJ 366)

In *Firestone Tyre and Rubber Co. of India, Ltd., Bombay v. Bhoja Shetty and another*, the L.A.T. (Bombay Bench, Shri Mitter and Shri Jeejeebhoy) gave permission to discharge the workmen who had slowed down their production and had contended before the Appellate Tribunal that go-slow tactics were as much a recognised weapon as a strike. The L.A.T. held that deliberate policy of 'go-slow' amounted to misconduct. (6-4-53, 1953 I LLJ 599) In *Bathgates Employees' Union v. Bathgate & Co., Ltd.*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mathur) held that a behest by some workman to another to adopt go-slow policy would be an act of serious misconduct even if there was no intimidation or coercion. (9-1-53, 1953 I LLJ 493) This view was repeated in *Firestone Tyre and Rubber Co. of India, Ltd., Bombay v. Bhoja Shetty and another*, (Shri Mitter and Shri Jeejeebhoy, 6-4-53, 1953 I LLJ 599) and in *A.C.C. Ltd., Shahabad Cement Works v. Pardhani Mallappa and seven others*. (Shri Jeejeebhoy and Shri Sastri, 30-4-53, Appeals Misc. Bombay 686/1952) In *Bharat Airways Ltd. v. Their Workmen's Association*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) held that the employers had the right to transfer an employee from place to place. (29-5-53, 1953 LAC 450)

In *Sri Pankoj Kumar Ganguli and twelve others v. Bank of India Ltd., Calcutta*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) reinstated the employees on the ground that the management had been found guilty of unfair discrimination and observed, "when the termination of service is found to be unjustified, the normal rule is reinstatement". On an appeal, the Calcutta High Court did not agree with the latter rule, pointing out that reinstatement might in some cases result not in ensuring industrial peace but in destroying it. (15-9-53, 1954 I LLJ 311)

In *Kanpur Mechanical and Technical Workers' Union v. Ganges Flour Mills, Maniaganj*, the L.A.T. (Lucknow Bench, Shri Jha and Shri Waliullah) ordered reinstatement of the worker on the ground that he had not been served with a charge-sheet and thereby allowed a reasonable opportunity of being heard. (6-10-53, 1954 I LLJ 332)

In *Dr. Balai Chand Mitra v. National Iron and Steel Co., Ltd.*, the L.A.T. (Calcutta Bench, Shri Mitter and Shri Campbell-Puri) emphasised that the fact that the punished employee was a member or official of the union was not a sufficient evidence of victimisation by the management. (24-12-53, 1954 I LLJ 649) This opinion was reiterated later in *Caltex (India), Ltd., Bombay v. Damodar Rajaram Bhosale and others*. (14-6-55, 1955 II LLJ 139)

#### PARTICIPATION IN STRIKES

In *India Paint, Colour and Varnish Co., Ltd. v. Their Workers' Union*, the L.A.T. (Calcutta Bench, Shri Mitter and Shri Jha) held that the employer had no right to terminate the service of workman for the reason of the latter's participation in a legal strike. (12-1-53, 1953 I LLJ 476)

In *Hanuman Jute Mills v. Their Workmen*, the L.A.T. (Calcutta Bench,

Shri Majumdar and Shri Mitter) held the lock-out by management to be justified and rejected the workers' claim for wages for the period of the lock-out on the ground that the lock-out had to be declared by the management due to the violent and defiant attitude of the workers. (26-6-53, 1953 II LLJ 684)

In *Ramakrishna Iron Foundry, Howrah v. Their Workmen*, the L.A.T. (Full Bench, Shri Mitter, Shri Jha, Shri Waliullah and Shri Modak) reiterated the view that a strike did not by itself put an end to the relationship of employer and employee, nor could an employer discharge a workman for his mere participation in a strike which was not illegal but simply unjustified, as also for his mere participation in an illegal strike where there was no appropriate provision in the certified Standing Orders. The L.A.T. added that the employer, however, would have the right to dismiss a workman joining an unjustified strike when either the strike itself was not *bona fide* or it was launched on extraneous considerations and not solely with a view to bettering the conditions of labour. It explained that the employer could not be given an unqualified right to dismiss a workman simply because the latter had joined a strike which was ultimately found to be unjustified. But at the same time to withhold such a right from the employer in every case of unjustified strike might lead to the various consequences for the economy of the country. A reasonable adjustment should therefore be made in such a manner that the national interest and the interest of the industry could be safeguarded with as little curtailment of the strength of the bargaining power of the workmen as possible. (18-2-54, 1954 II LLJ 372)

#### RETRENCHMENT

In *Tata Oil Mills Co., Ltd., Tatapuram v. Their Workmen*, the L.A.T. (Madras Bench, Shri Mathur and Shri Jha) reversed the decision of the industrial tribunal that the company could not retrench workers for making more profits. The L.A.T. observed that the desire to make more profits could neither affect the *bona fides* of the company nor could it be taken as an extraneous consideration, and that the company had a right to determine its labour force. The L.A.T. all the same allowed compensation for loss of employment at the rate of one month's total emoluments for each year of service. The State Government, however, did not enforce the decision of the L.A.T. on considerations of social justice, arguing that it would not be in public interest to allow the company to discharge a large number of workmen without any charge of incompetence or indiscipline against them, especially at a time when the company was making profits. (26-11-52, 1953 I LLJ 45)

In *Indian Metal & Metallurgical Corporation v. Their Workmen*, the L.A.T. (Madras Bench, Shri Mathur and Shri Jha) confirmed the award of retrenchment relief equal to half a month's wages for every year of service, on grounds of equity on the closure of the concern due to trade reasons. (28-11-52, 1953 I LLJ 224)

In *Grand Hotel Employees' Union v. The Grand Hotel, Calcutta*, the L.A.T. (Calcutta Bench, Shri Majumdar and Shri Mitter) held that since the

retrenchment was *bona fide* and therefore justified, the workmen retrenched were entitled to compensation by way of retrenchment relief, measured in terms of the length of their service and the total emoluments drawn immediately before their being discharged. (6-2-53, 1953 II LLJ 25)

In the case of *General Motors (India) Ltd.* and their monthly and hourly-rated workmen, the L.A.T. (Bombay Bench, Shri Mitter and Shri Jeejeebhoy) conceded the demand of the workmen for retrenchment relief equal to one month's basic wages. It observed that retrenchment involved a question of fact and depended upon the various circumstances existing at the time of retrenchment. The measure of relief could only be decided on the basis of all the relevant factors involved including existing emoluments and retirement benefit schemes, the company's capacity to pay and the state of the labour market. Provident Fund dues and gratuities were intended to be a provision for the employee's old age and, if possible, he should not be compelled to utilise these funds during the period of unemployment. (2-4-53, 1953 I LLJ 748)

In *Mahalakshmi Mills Ltd. and another v. Hirralal Saburdas and others*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Sastri) held that retrenchment compensation could also be granted to the retrenched workmen who were not a party to the dispute. (7-5-53, 1953 II LLJ 356)

#### GRATUITY

In *Standard Batteries Employees' Union v. Standard Batteries Ltd.*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Waliullah) reversed the award of the lower tribunal, disallowing the demand for gratuity scheme on the ground of increase in wages. It granted a modest gratuity scheme, as given in its *Army and Navy Stores* decision, even though a substantial provident fund scheme was in existence, as the company had been doing well during the last eight years of its existence. (27-1-53, 1953 I LLJ 355)

In *General Motors (India) Ltd. v. Their Workmen*, cited earlier, the L.A.T. held that compensation as a retrenchment relief and gratuity as a retiring benefit were intended to serve two entirely different purposes. The former was intended to serve an employee during the period of his unemployment and distress when he had to search for an employment while the latter was meant to be a provision for old age and to meet the misfortune of mental and physical incapacity. It granted retrenchment relief equal to a month's basic wages for each completed year of service. (2-4-53, 1953 I LLJ 748)

In *Burmah-Shell, etc. Oil Companies v. Their Workmen*, the L.A.T. (Madras Bench, Shri Jha and Shri Waliullah) directed the Standard Vacuum Oil Company to replace the pension and death benefit scheme started by it in October 1947 by a provident fund scheme from July 1953 on the pattern of the Caltex scheme. (15-5-53, 1953 II LLJ 236)

In *Sirpur Paper Mills Ltd. v. Their Workmen*, the L.A.T., not agreeing with the award of the industrial tribunal, granted a modest scheme of gratuity. It held that in cases where the history, the financial circumstances and the future prospects of a concern justified it, the double benefits of gratuity and provident fund ought to be given. (15-7-53, 1953 II LLJ 488)

APPENDIX—III

IMPORTANT L.A.T. AWARDS SUBSEQUENT TO  
AUGUST 1954

BONUS

(a) THE NATURE OF BONUS AND AVAILABILITY OF SURPLUS

In *Muir Mills Co., Ltd., Kanpur v. Its Workmen*, the L.A.T. (Lucknow Bench, Shri M. Waliullah and Shri B.B. Prasad) held that payment of bonus by other concerns in the same place engaged in similar business could not be considered to be a criterion to direct the company to pay bonus to its workmen in the absence of available surplus during the year in question. (18-4-55, 1955 II LLJ 29)

In *Mathurdas Kanji and others v. Bombay Dock Workers' Union and others*, the L.A.T. (Bombay Bench, Shri F. Jeejeebhoy and Shri L.P. Dave) said : "We are also conscious of the fact that bonus as normally understood is dependent upon the trading results of an undertaking of a particular period. But this bonus is of a different character, and having regard to the circumstances surrounding this agreement, and the pending claim of the workmen to incentive bonus according to the port trust scheme, we take the view that this 'incentive bonus' of 4 annas per ton is bonus of the kind which the workmen had been claiming all along...but having regard to all the circumstances we are of the view that whatever may be the strict legal rights of the employees to this 'incentive bonus' of 4 annas per ton, it is an addition which they in justice ought to share with labour, provided that labour has helped in earning this incentive bonus." The L.A.T. further held that the workers who had helped the contractors in clearing the goods should be paid 45 per cent of the incentive bonus which the appellants would subsequently receive from the Government. (18-5-55, 1955 I LLJ 665)

In *Indian Industrial Works Ltd. v. Engineering Mazdoor Sabha*, the L.A.T. (Calcutta Bench, Shri K. Siddiki and Shri S.C. Chakravarty) rejected the contention of the company that grant of Puja bonus was not justified as there was no surplus. It pointed out that "in case of customary or contractual bonus, the liability depends exclusively on the express or the implied contract under which a claim thereto arises." (25-5-55, 1955 II LLJ 675)

In *British India Steam Navigation Co., Ltd. v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Siddiki and Shri Chakravarty) held that so far as the liability to pay bonus irrespective of any profit or loss was concerned, the tribunals had not allowed it except where it existed as a condition of service and as a matter of contract. Cut bonus was paid on the basis of good attendance, efficiency and satisfactory work. This was a source of extra income for the outdoor staff, as Puja bonus was for the indoor staff, and in actual practice the cut bonus was larger. Non-payment of Puja bonus to

the outdoor staff was no unfair discrimination and did not amount to unfair labour practice. (22-6-55, 1955 LAC 551)

In *Shalimar Rope Works Mazdoor Union v. Shalimar Rope Works Ltd.*, the L.A.T. (Calcutta Bench, Shri Siddiki and Shri E. Krishnamurthi) held that production bonus was not in the same category as wages or dearness allowance which were liable to change irrespective of agreement between the parties as a result of changed circumstances. Though a production bonus might be desirable in the interest of harmonious relationship between the employers and employees, there was no obligation on the part of any management to give production bonus. Agreements regarding such matters between the parties should not be lightly interfered with. (29-3-56, 1956 II LLJ 371)

In *Mahalaxmi Cotton Mills Ltd. v. Mahalaxmi Cotton Mills Workers' Union*, the L.A.T. (Calcutta Bench, Shri S.B. Singh and Shri K.C. Gupta) ruled that every kind of bonus was not a deferred wage but bonus which was a part of wages on account of an agreement would be a deferred wage. (23-4-56, 1956 II LLJ 127)

In *Statesman Employees' Union, Calcutta v. The Statesman Ltd., Calcutta*, the L.A.T. (Calcutta Bench, Shri Siddiki and Shri Harnam Singh), referring to the workers' claim to Puja bonus, pointed out that bonus had not been paid on any uniform basis between the years 1915 and 1950. That by itself militated against the stand of the workmen that the grant of Puja bonus was a condition of service. (13-7-56, 1957 LAC 701)

#### (b) CALCULATION OF THE AVAILABLE SURPLUS

In *Glaxo Laboratories (India) Ltd., Bombay v. Their Workmen*, the L.A.T. (Shri D.E. Reuben and Shri K.S. Campbell-Puri) ruled that, in computing the surplus available for distribution as bonus, the entire paid-up capital of the concern must be taken into consideration for allowing a fair return on capital. Capital which had been paid for otherwise than in cash should not be distinguished from capital paid for in cash. (19-8-54, VII FJR 238)

In *Forbes Forbes Campbell & Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Reuben and Shri Campbell-Puri) held that where the income earned on investment by the company was included in the profit for the purpose of calculating bonus, 4 per cent return on the capital so invested must be allowed, on the same basis as on reserves employed as working capital. (9-9-54, 1954 II LLJ 477)

In *Mackinnon Mackenzie and Company's Indian Staff Organisation v. Mackinnon Mackenzie and Co., Ltd., and others*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) ruled that there was no inflexible rule that an industrial tribunal should refuse to accept the accounts of any employer on the only ground that they had not been audited. If the industrial tribunal felt that the accounts ought to have been audited or that proof of audit should have been produced then it could pass appropriate orders. (18-11-54, 1955 I LLJ 154)

In *Ruston and Hornsby (India) Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy, Shri Reuben and Shri Campbell-Puri) ruled that four per cent return must be allowed on the part of the paid-up capital represented by bonus shares only for the year in which such shares were

issued but for subsequent years there was no justification for making a distinction between them and the paid-up capital represented by paid-up shares for the purposes of return. The L.A.T. added that the circumstances in which a lower return was given in the case of *Ganesh Flour Mills Company, Ltd.*, had been explained by the Bombay Bench of the Appellate Tribunal in *Indian Oxygen and Acetylene Company, Ltd. v. Their Workmen* (1954 II LLJ 54), viz., that the bonus shares in that case comprised 91 per cent of the share capital. In that case, the Bombay Bench had fixed the return at 5 per cent having regard to the fact that the capitalisation took place in the period under consideration and thus represented an accretion to the shareholders during the year for which bonus was being awarded. In the instant case, this applied to the year 1950. In 1951, however, there was no reason why the bonus shares should be distinguished from the fully paid-up shares.

The L.A.T. further held that the system of multipliers was a device for equating the purchase value of machinery with its replacement value. The multipliers were fixed with reference to the level of prices at the time of purchase. The system worked on averages. Hence no particular sanctity attached to the system of multipliers especially in a case where a lot of machinery was purchased secondhand and where the original purchase prices were not available. In that case the replacement value of the machinery must be taken, and after deducting depreciation reserves and the breakdown value of the existing machinery, the balance by way of rehabilitation reserves must be made by spreading it over a particular number of years. (10-12-54, 1955 I LLJ 73)

In *Plywood Products v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri Prasad) held that in determining the question of bonus the trading result of the particular year only must be taken into account. Neither the profit of the past years could be added to it, nor could the losses of the past years be set off against the profit of that particular year. It added that it should be the sum which was actually in the depreciation fund that should be deducted from the amount required for rehabilitation and not what might be allowed in the future. (10-12-54, 1955 I LLJ 308)

In *Model Mills, etc. Textile Mills, Nagpur v. Rashtriya Mill Mazdoor Sangh and others*, the Appellate Tribunal (Bombay Bench, Shri Jeejeebhoy and Shri Dave) observed that in calculating the available surplus, income-tax as legally due had to be deducted as a prior charge, even if the concern had been exempted by Government from its payment. About rehabilitation charges, the L.A.T. said, "There is no hard-and-fast rule for the ascertainment of the amount required for rehabilitation, but the method followed in our Full Bench decision and in the subsequent decisions ought to be adopted unless there is any more positive guide. Shortly stated, the first requisite is to ascertain when a particular machine was installed and when it requires rehabilitation or renewal or modernisation and then to ascertain the cost involved. In one case the block value of machinery in 1947 multiplied by 2.7 and spread over 15 years was considered to yield a fair figure for rehabilitation reserve; it may be that it is a little higher at present." The L.A.T. added, "There is no question of any defiance of the L.A.T.'s formula, as the adjudicator seems to think, in the millowners' failing to set apart

amounts as reserve for rehabilitation, replacement and modernisation of machinery. It may well be that because of certain financial commitments it is not possible to enlarge the reserves in any particular year, but that by itself is no reflection on the management, nor does it entitle labour to say that for that reason the specific component of the formula, viz., the statutory depreciation, should not be a first charge." (24-3-55, 1955 I LLJ 534)

In *Bennett Coleman and Company, Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Reuben and Shri R.C. Soni) held that under the Indian Income-tax Act, as amended, initial depreciation was given in respect of the year of installation of machinery and therefore initial depreciation on the machinery that was put into production during the year in question, as also initial depreciation on the new extension of the buildings, should be allowed. The L.A.T. further held that where the bulk of the share capital consisted of 10 per cent cumulative preference shares, which had come into existence long ago in circumstances in which the *bona fide* of the company was not open to doubt, it was not open to the lower tribunal to allow a return of only 6 per cent on those shares on the ground that if an excessive rate were allowed on preference shares, it might induce established concerns to issue such shares at excessive rates. (15-4-55, 1955 II LLJ 60)

In *Muir Mills Co., Ltd., Kanpur v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri Prasad) set aside the industrial tribunal's award (raising the bonus from 2 annas to 4 annas per rupee of the basic earnings), on the ground that there was really no surplus available for distribution after allowing 6% dividend on bonus shares and subscribed shares and after deducting other legitimate expenses. (18-4-55, 1955 II LLJ 29)

In *Bombay Gas Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) held that the employers had to prove, by appropriate evidence to the satisfaction of the tribunals, the prior charges claimed by them. It added that in the absence of details of particulars of the items of machinery or plant to be replaced, their future useful life, and the amount required for their rehabilitation, the claim for such reserve must be rejected as not having been established. (16-5-55, 1955 II LLJ 151)

In *Trichinopoly Mills Ltd. v. Their Workmen*, the L.A.T. (Shri V.K. Pillai and Shri Vyas) observed, "Shri G. Ramanujam for the workers strenuously contends against this finding and argues that only income-tax on the balance of net profits left after providing for bonus at 7 annas in the rupee, is the proper charge. The counsel for the management argued that the mills had since paid Rs. 2,56,909 as income-tax for the year on actual assessment and it should be deducted in making the calculation for bonus. The contention raised by Shri Ramanujam is correct and in working out the Full Bench Formula, we are not concerned with income-tax estimated or actual and the proper charge under this head will be at 7 annas in the rupee. The portion of the net profit allotted for bonus being not taxable, it is always open to the management to obtain rebate of tax on the quantum of bonus that may be eventually awarded." Regarding return on reserves used as working capital, the L.A.T. said that each case had to be decided on its own merits, and what should be the proper rate would depend very much on the facts and circumstances of a particular

case. In the instant case, the mills had borrowed money with interest at five per cent and thus the rate of five per cent adopted by the tribunal below was reasonable. (25-5-55, 1955 LAC 392)

In *National Electrical Industries Ltd. v. Its Workmen* (other than the clerical staff), the L.A.T. (Bombay Bench, Shri Soni and Shri Dave) reversed the industrial tribunal's award granting bonus (at the rate of 1/6th of annual basic wages) for the reason that after deducting income-tax charges at the statutory rate without regard to exemption given by income-tax authorities for previous losses, etc., and after allowing for necessary rehabilitation (not allowed by the industrial tribunal), there was no surplus available for bonus. (10-6-55, 1956 I LLJ 155)

In *Associated Cement Companies, Ltd. and others v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) reduced the amount of bonus awarded from 1/3rd to 1/4th of annual basic wages, on the ground that after applying the Full Bench Formula fully no surplus was available for additional bonus. The L.A.T. said, "Six per cent return on paid-up capital has been held sufficient in established industry like textile industry. In many other industries too, it is held to be a reasonable return. So in the case of cement company 6 per cent return on paid-up capital and 4 per cent on reserves used as working capital for the year in question must be held to be reasonable. Further, where profit earned on investments made by the company out of the reserves is included in the profit of the year in question, 4 per cent return on such reserves must be allowed on the analogy of reserves utilised as working capital. Further, taxation and gratuity reserves employed as working capital must also be allowed a return of 4 per cent." The L.A.T. allowed the calculation of the amount of rehabilitation by deducting from the replacement cost breakdown value for machinery and available reserves (excluding taxation and gratuity reserves and premium on shares sunk in the block and subsequently capitalised). The L.A.T. ruled that amount of depreciation written off, which had been applied by the concern for past renewals of machinery and plant, could not be deducted for determining rehabilitation. (27-6-55, 1955 II LLJ 145)

In *Elephant Oil Mills Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Soni) held that in the absence of any circumstances justifying a reduced return it was not unusual to allow 4 per cent return on reserves used as working capital. The rate of 4 per cent had been generally allowed on the basis that these resources if not utilised as working funds would have earned quite as much if invested. (30-6-55, 1955 II LLJ 162)

In *Larsen & Toubro Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Soni) upheld the award of 8% return on ordinary shares, in view of the nature of business being not attractive to investors. It further held that where the business of a concern mainly consisted of import on indent basis of machineries for sale, the efforts of the clerical staff, service staff and workmen employed in a small workshop maintained for replacing and repairing parts, in the earnings of profits of the concern, must be considered to be comparatively small. In the circumstances it would not be proper to grant more than roughly half the 'available surplus' by way of

bonus. The L.A.T. allowed calculation of income-tax without deducting bonus from gross profit and added back the refund of income-tax to find out the amount of surplus left with the concern after payment of 4 months' basic wages as bonus. (1955 II LLJ 238) In *Ganesh Flour Mills v. Their Workmen*, in the calculation of income-tax as a prior charge, the L.A.T. (Shri Prasad and Shri R.K. Basu) allowed deduction of bonus (as also depreciation) from gross profits, on the ground that the income-tax law permitted so. (16-7-55, 1955 LAC 538)

In *Employees of India General Navigation and Railway Co., Ltd. v. India General Navigation and Railway Co., Ltd., Calcutta*, the L.A.T. (Shri A. Das Gupta and Shri M.N. Gan) ruled, "Bonus cannot be paid out of any reserves built up out of projects of the past years. ...Similarly, amounts repaid to the concern during the year, which came out of profits of past years, e.g., refund of Excess Profits Tax, cannot also be included for awarding bonus...Though a concern is not liable to income-tax on account of heavy losses in previous years, it is nevertheless entitled to deduct the income-tax which would otherwise have been payable on the profits of the year for computing the surplus available for awarding bonus." (26-7-55, IX FJR 136)

In *Automobile Products of India Ltd. v. Their Workmen* (monthly-paid and hourly-paid) the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Prasad) held that provision for full rate of statutory depreciation (allowable under the Income-tax Act) must be made while working out the available surplus Formula in spite of the fact that the amount actually provided for or set apart by the employer for the year in question as depreciation was less than such amount. The L.A.T. added that in calculating the quantum of bonus, not only the profits of the year but also the general financial position of the concern must be taken into account. (5-8-55, 1955 II LLJ 266)

In *Jeewanmal & Co., Kanpur v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Basu and Shri N. Govindan) set aside the award of bonus at the rate of 1 anna per rupee of basic wages, granted by the industrial tribunal without allowing full statutory depreciation permitted for income-tax purposes. The L.A.T. affirmed that such statutory depreciation should be taken into account in calculating the available surplus irrespective of the fact whether or not it was debited in the balance-sheet and profit and loss account. (8-8-55, 1955 II LLJ 689)

In *Saxby and Farmer Mazdoor Union, Calcutta v. Saxby and Farmer (India) Ltd., Calcutta*, the L.A.T. (Calcutta Bench, Shri Das Gupta and Shri Gan) ruled, "Since the Full Bench decision the principle of assessing bonus payable to the workmen which had hitherto been unsettled has substantially been established in India. ...It is essential that the plant and machinery should be kept continuously in good working order for the purpose of ensuring a fair return to the investors for their investment and such maintenance of plant and machinery is considered to be to the advantage of labour, for the better the machinery the larger the earnings and the better the chance of securing a good bonus. It is on this consideration that the Full Bench of this Tribunal has laid down that the first charge on gross profit should be the amount of money that would be necessary for rehabilitation, replacement and modernisation of machinery." The L.A.T. allowed

rehabilitation by deducting the available reserves and the depreciation already allowed and 5% for value of the scrap from the replacement costs. The latter were determined by multiplying the original cost by price factors or multiples.

The L.A.T. further held that the shareholders were entitled to a return at the rate of 6 per cent. There was absolutely no reason to reduce the rate of return on capital investment. (30-8-55, 1955 ALC 707)

In *Assam Chah Karmachari Sangha, v. Assam Company, Ltd.*, the L.A.T. (Calcutta Bench, Shri Das Gupta and Shri Gan) held that since the usual method of calculating prior charges was not possible in the instant case (tea industry), a return of 2 per cent more than the normal rate of 4 per cent on the working capital must be allowed to cover the annual charges for rehabilitation and replacement. The L.A.T. added that all industries involved some risks depending on the condition of plant and machinery, market and labour, but an agricultural industry involved additional risks, beyond human control and in the case of tea industry, 7 per cent return on paid-up capital must be considered to be reasonable and justified. It also held that the concern was entitled to a deduction of the income-tax payable in England from the profits of each of the three years, namely, 1950, 1951 and 1952, before any bonus was paid to the workmen out of the profits. (31-8-55, 1956 I LLJ 157)

In *Webbing and Belting Factory Ltd. v. Their Workmen*, the L.A.T. (Shri Waliullah and Shri A.M. Ansari), setting aside the award of the industrial tribunal giving a fortnight's wages as bonus, held that besides the initial and normal depreciation already allowed by the provisions of the Indian Income-tax Act, the new Section 10(2) (VI-a), as introduced by the amending Act LXVII of 1949, allowed extra depreciation on buildings and machinery put up after 31st March, 1948, but before 31st March, 1954. In order to ascertain the available surplus for the year in question (1952-53), this extra depreciation under Section 10(2) (VI-a) of the Income-tax Act must be provided for from the gross profit besides the normal and initial depreciation. (20-9-55, 1956 I LLJ 313)

In *Beardsell & Co., Ltd. v. Their Workmen*, the L.A.T. (Madras Bench, Shri Salim M. Merchant and Shri A.V. Krishna Rao) held that the quantum of bonus paid voluntarily in the past could not be considered as the standard for adjudication, and it reduced the bonus from 1½ month's, as awarded by the industrial tribunal, to 1 month's wages. The L.A.T. also held that commission paid to the directors of the company must be treated as contractual and should not be excluded unless it was unduly large, and the commission earned by the company as managing agents of another company could not be treated as extraneous profits when the work relating to it was done by some of its clerks.

The L.A.T. added that when the company was incurring heavy expenditure for providing special amenities such as quarters, tiffin, etc. for its covenanted managerial staff and also paid handsome bonus to such staff as per a special formula which adversely affected the residual surplus from which the bonus was paid to its workmen, the amount paid as bonus to such staff during the year in question must be added back to the gross profits.

The L.A.T. further held that before a return could be allowed on

reserves employed as working capital, it must be proved that the amount on which return was claimed had actually been used in or about the business and also the period for which it was so utilised. Further when the company failed to prove that investments, the income from which was included in the profit of the year in question, were made from reserves, a claim for any return on such amount could not be allowed. (4-10-55, 1956 I LLJ 58)

In *Parle Products Mfg. Co., Ltd. v. Their Workmen*, the L.A.T. (Shri M.D. Lalkaka and Shri S. Matin Ahmed) upheld the decision of the industrial tribunal and ruled, "If proper evidence is not placed before the industrial tribunal as to the sum required for rehabilitation beyond the statutory depreciation, the tribunal would be justified in rejecting the claim for rehabilitation allowance". (5-10-55, IX FJR 358)

In a dispute between *S.I.R. Ice Factory* and their workmen, the L.A.T. (Madras Bench, Shri Pillai and Shri Vyas) held that when the business was run as a proprietary concern and where the nature of business involved a great deal of wastage, a higher return of 9% on the invested capital must be held to be justified and that in the absence of any available surplus, much less any margin of profit, the claim for bonus must be rejected. The L.A.T. reversed the award of the industrial tribunal of two months' basic wages as bonus. The L.A.T. added that the main incentive in running a proprietary concern was profit and no entrepreneur went in for business just to earn any remuneration or a certain rate of interest on the capital invested by him. In that case the proprietor would not be entitled to claim any remuneration as prior charges but there ought to remain a sufficient margin of profit for him, before any bonus was paid, for allowing necessary prior charges. Further, there was no principle which barred the claim in case of a proprietary concern for provision of rehabilitation reserves as a prior charge. (27-12-55, 1956 I LLJ 438)

In *Mahalaxmi Woollen Mills Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lalkaka and Shri B.K. Khanna) set aside the award of the lower tribunal, on the ground that after allowing income-tax deductions (exempted by the income-tax authorities and allowing 5 to 6% interest on borrowed capital which the lower tribunal had failed to do) there was no surplus left for distribution of bonus. (29-12-55, 1956 I LLJ 305)

In *Peirce, Leslie & Co., Ltd. v. Its Workmen*, the L.A.T. (Madras Bench, Shri Krishna Rao and Shri Merchant) ruled that amounts earned as interest on investments from reserves must be treated as unrelated to the employees' efforts and as such the employees could not claim any share in such income. It further held that initial depreciation and additional depreciation were abnormal additions to the income-tax depreciation, designed to meet particular contingencies and for a limited period. It would not be fair to the workmen if these two depreciations were treated as prior charges before the available surplus was ascertained; for in many cases, if so allowed, there would be no available surplus left. The L.A.T. added that, taking the steady nature of the business done by the company, a return of 6 per cent on its invested capital represented by the deferred or ordinary shares and at contractual rate on its capital represented by preference shares and 4 per cent on reserves employed as working capital must be considered to be reasonable.

It reiterated that a claim for rehabilitation was a question of fact to be provided in each case and when a company had failed to put forward and prove the same before the industrial tribunal, such a claim could not be allowed to be put forward and proved at the appellate stage.

Taking into account the residuary surplus for the year 1952-53, left over after paying bonus equal to 4 months' basic salary, the L.A.T. awarded additional bonus of half-month's salary. It increased the bonus for 1953-54 from 4 months' to 5 1/3 months' basic salary in view of larger surplus in that year, bringing the rate of bonus in both years equal to that paid to non-shareholder covenanted staff. (30-1-56, 1956 I LLJ 458)

In *Dharangadhra Chemical Works Ltd. v. Its Workmen*, the L.A.T. (Bombay Bench, Shri Lalkaka and Shri Khanna) reiterated that industrial concerns had become rehabilitation-conscious after the Full Bench decision of the Appellate Tribunal regarding the grant of bonus in the cotton textile industry. The L.A.T. urged that industrial tribunals must be very careful in seeing that any claim made by concerns for such a prior charge was strictly established to the satisfaction of the tribunals by appropriate and positive evidence. The L.A.T. added that the Full Bench decision had applied 2.7 as multiplier to the cost of machinery and plant. In that industry, practically the whole of the machinery, etc. which was then taken to require replacement in the future had been purchased before the commencement of the Second World War. This could not however justify the application of the same factor to machineries purchased or buildings erected long after the War when the prices had already gone up by about the same factor or more and thereafter had even commenced to decline. Accordingly, the proper multiplying factor to be applied to the cost of machinery and buildings purchased or constructed from time to time during and after the last War would have necessarily to be varied according to the year of purchase of the machinery or the erection of the buildings. The L.A.T. also held that four per cent return on reserves used as working capital must be held to be reasonable and justified. (10-2-56, 1956 I LLJ 475)

In *Anderson Wright Ltd. v. Anderson Wright & Co. Employees' Union*, the L.A.T. (Calcutta Bench, Shri Gan and Shri V.N. Dikshitalu) ruled that where the memorandum of association of a company mentioned acquisition of shares of other companies as one of its objects and authorised investments of moneys of the company not required for the company's own purposes, it could not be considered that investment in shares of other companies was not the business of the company. Where a company having paid-up capital of Rs. 40 lakhs borrowed another Rs. 65 lakhs and invested Rs. 107 lakhs in shares of other companies, dividends earned by the company on such shares were not extraneous profits for the purpose of bonus. Further, writing correspondence and keeping accounts, without which investments worth Rs. 107 lakhs could not have been acquired and held, were not negligible services to be contemptuously ignored as having no relation to the acquisition of profits by way of dividends. The L.A.T. further ruled that it was not correct to contend that provision for income-tax should be made out of the profits of the year in question only after the amount of bonus was ascertained and deducted. The correct position would be to provide for income-tax on

profits less statutory depreciation and after bonus was ascertained to add back an amount equal to the income-tax on the amount of bonus to the share of the company in the available surplus. (25-2-56, 1956 I LLJ 664)

In *Messrs Associated Electrical Industries (India) Ltd., Calcutta v. Associated Electrical Industries (India) Ltd. Employees' Welfare Association, Calcutta*, the L.A.T. (Calcutta Bench, Shri Gan and Shri Dikshitulu) held that reserves, when converted into bonus shares, ceased to be liquid assets and could not be withdrawn. But, on the other hand, bonus shares represented not exclusively capital resources of shareholders but only past profits earned with the help of the labour of employees also. Hence, the return on bonus shares should be allowed at a rate less than that allowed on shares issued for cash but more than what was usually allowed on reserves employed as working capital.

The L.A.T. added: "It is argued that the Full Bench Formula was intended for textile industry and that the same should be applied to other industries with suitable modifications and that, as in this case, there is no manufacturing plant and machinery, general reserves should be allowed to be built up for financial stability of the concern. There is no objection to the company's building up any amount of reserves actually from its profits." The L.A.T. ruled, "It is not permissible to add items of prior charges not found in the Full Bench Formula. ...it is a matter of taking into consideration the actual need for rehabilitation of machinery used in the industry and not a matter of setting by sufficient reserves in the interest of the stability of an industry." The L.A.T. further held that income-tax was undoubtedly a necessary charge after deduction of which alone the measure of prosperity of the concern in which the employees were entitled to participate could be ascertained. Income-tax must be calculated on gross profits without deducting bonus, as the amount of bonus would be determined only from the surplus available after deducting the necessary charges. (27-2-56, 1957 LAC 554)

In *Greaves Cotton and Crompton Parkinson Ltd. v. Its Workmen*, the L.A.T. (Bombay Bench, Shri Reuben and Shri Gupta) held, "Since the award under appeal was made, an important change in the bonus formula has resulted from the decision of a Full Bench of this Tribunal; we no longer deduct initial and additional depreciations in ascertaining the year's profits for the purpose of the formula. The normal depreciation, which is all that is now deducted, amounts in this case to Rs. 50,000. One of the main points of controversy before us arose out of this change. Under the recent decision of the Full Bench, initial and additional depreciations form part of the year's profits. Shri Sule, however, would have us exclude them from the profits in assessing the income-tax provision for the purpose of the formula. This contention was rejected by a Special Bench, to which we both belonged, in *Indian Oxygen and Acetylene Company appeals* [(Bom) Nos. 226 and 227 of 1953]." (9-3-56, 1956 I LLJ 486)

In *Shalimar Rope Works Mazdoor Union v. Shalimar Rope Works Ltd.*, the L.A.T. (Calcutta Bench, Shri Siddiki and Shri Krishnamurthi) reversed the award of the lower tribunal giving an increase in bonus equal to 1/12th of the basic wages, on the ground that the huge profits from rise in prices of

raw materials due to the Korean War were of an extraneous character, and should not therefore be included in determining the available surplus. (29-3-56, 1956 II LLJ 371)

In *Pashabhai Patel & Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) decided that where the nature of business of the company was such that large sums of money by way of deposits against orders which did not belong to the company came into its hands free of interest and were utilised in the business and where by so employing that money the company had earned profits, then the employer could not say that a return must be allowed as a prior charge on such amounts before labour could claim any share of the profits by way of bonus. The amounts so utilised did not belong to the company. (29-3-56, 1956 I LLJ 627)

In *General Electric Company of India, Ltd. v. Their Workers*, the L.A.T. (Madras Bench, Shri Vyas and Shri Krishna Rao) reiterated that cash on hand at the end of the year as an item of working capital, employed in the business, would not be entitled to any return. (11-5-56, 1956 II LLJ 113)

In *A.D. Cotton Mills Ltd., Quilon v. Their Workmen*, the L.A.T. (Madras Bench, Shri Vyas and Shri Krishna Rao) said, "No doubt in certain circumstances it would be open to claim by way of prior charge the adjustment of past arrears of depreciation, but in the present case after two years' loss the workers' claim for bonus out of the profits of the next following year should not be adversely affected, by allowing the past arrears of depreciation all at one time so as to reduce the available surplus." (15-5-56, 1957 LAC 192)

In *Britannia Biscuit Co., Ltd., Bombay v. Their Workmen*, the L.A.T. (Shri Jeejeebhoy and Shri Reuben) reiterated that under the Full Bench Formula "the available surplus should be first determined, and then the possible reduction in income-tax should be an item for consideration in ascertaining what portion of the available surplus should go to the workmen." It added, "Where a concern has paid voluntarily bonus exceeding the amount of the surplus of profits available for bonus in accordance with the Full Bench Formula, there will be no justification for the award of additional bonus." The L.A.T. also held that profits from the sale of motor vehicles and motor cars and refund of sales tax were extraneous profits, not to be taken into account. (26-6-56, X FJR 499) In *Mettur Industries Ltd., Mettur Dam v. Their Workers*, the L.A.T. (Bombay Bench, Shri Lalkaka and Shri Vyas) held that since the profits had arisen out of the sale of certain by-products and left-overs like waste cotton, shorts and fents, it could not be alleged that the workers had not generally contributed to the production and sale of such products or materials and there was no reason why the sale proceeds of such products should be treated in any manner other than that applied to the sale proceeds of the textile goods produced by the mills. (29-9-56, 1957 LAC 288)

In *Greaves Cotton & Co., Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Reuben and Shri Krishnamurthi) held, "It cannot be denied that the commission paid (to the executives) serves as an incentive to better business and high profits in which the workmen also participate. At the same

and cannot be pruned down. If it is so excessive as to be unreasonable, it may have to be allowed at a lesser rate. On the facts of the present case there is no evidence about the same and we are not in a position to uphold the union's contention" that "commission paid to the executives should not be allowed as an item of prior charge". (21-11-56, 1957 I LLJ 418)

In *B.I.C. Ltd. (Cawnpore Cotton Mills Branch and Cawnpore Woollen Mills Branch) v. Their Workmen*, the L.A.T. (Shri Lalkaka and Shri Vyas) ruled, "Payment of bonus *ex gratia* to some of the employees cannot by itself justify the industrial tribunal in awarding bonus on the same basis to other employees unless adequate available surplus is shown to exist." The L.A.T. held, "Income from investments made by depreciation reserves must be regarded as extraneous profits and such income cannot be regarded as part of the trading income of the company. Where there is nothing to show that such investments were made by the employer to protect, extend or add to the main business, the income from them cannot be regarded as profits for the year in question for calculating available surplus." (4-1-57, 1957 I LLJ 575)

(c) QUANTUM OF BONUS

In *Trichinopoly Mills Ltd. v. Their Workmen*, the L.A.T. (Shri Pillai and Shri Vyas) awarded bonus equal to 8 months' basic wages (66 2/3 of total earnings). (25-5-55, 1955 LAC 392)

In *International General Electrical Company (India), Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Reuben and Shri Soni) reiterated that bonus as envisaged by the Appellate Tribunal was not an assertion of the workmen's right to a share in the profits; it was an attempt to shorten the gap between the living wage and the actual wage paid to the workmen. It must bear some relation to wages and to the share that the workmen took in producing the profits. In assessing bonus care must be taken to see that the bonus granted was not so excessive as to create fresh problems in the vicinity. The L.A.T. reversed the award of the adjudicator granting additional bonus equal to 2 months' wages, after considering service conditions of the clerks in similar categories in other concerns in the area and the fluctuating nature of profits. (6-6-55, 1956 I LLJ 153)

In *Parle Products Mfg. Co., Ltd. v. Their Workmen*, cited earlier, the L.A.T. observed: "Even if a large surplus of profits is available for distribution as bonus, that by itself is not a reason for allowing disproportionately large amounts as bonus as any such allowance is bound to cause serious repercussions not only in the other units of the same industry but also other industries in the area." (5-10-55, IX FJR 358)

In *Dharangadhra Chemical Works Ltd. v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lalkaka and Shri Khanna), while not interfering with the award of six months' wages as bonus by the industrial tribunal, observed that even in cases where the available surplus was large, the maximum bonus that it was desirable to award should be limited to 4 or 5 months' basic wages or a little more. (10-2-56, 1956 I LLJ 475)

In the case of *Kanan Devan Hills Produce Co., Ltd.*, cited earlier, the L.A.T. upheld the award of the industrial tribunal granting to the workers, as agreed upon in the tripartite conferences. 8 1/4% of total earnings for 1952

as bonus in the form of an *ad hoc* minimum payment, the Full Bench Formula being not applicable to the case. (29-2-56, 1956 LAC 357)

In *Greaves Cotton and Crompton Parkinson Ltd. v. Its Workmen*, the L.A.T. (Bombay Bench, Shri Reuben and Shri Gupta) held that grant of Rs. 1,69,000 out of the available surplus by way of bonus as against Rs. 28,000 left at the disposal of the company must be held to be excessive and unreasonable. Such grant could not be sustained on the ground that the proposed bonus would bear the same ratio to the bonus of the previous year as the dividend paid to the shareholders in the instant year would bear to the dividend paid in the previous year. (9-3-56, 1956 I LLJ 486)

In *William Jacks & Co., Ltd. v. Their Workmen*, the L.A.T. (Madras Bench, Shri Vyas and Shri Mahmood Sheriff) reiterated: "Moreover, mere available surplus, though an important factor, is not the only criterion. Besides safeguarding the claims of the shareholders and the requirements of industry, the quantum of bonus has to be related to the employees' efforts and care must be taken to see that the bonus which is given is not so excessive as to create fresh problems in the vicinity or in the industry, to upset the emoluments all round and to lead to industrial discontent and the possible emergence of a privileged class." (31-3-56, 1956 I LLJ 618)

(d) BONUS IN BRANCHES OF PARENT CONCERN

In *Mackinnon Mackenzie and Company's Indian Staff Organisation v. Mackinnon Mackenzie and Co., Ltd., and others*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) ruled that where two branches of a concern were engaged in distinct and unconnected trade activities, the claim of employees of one branch for bonus on the basis of pooled profits of the company at both the branches must be held to be unjustified. (18-11-54, 1955 I LLJ 154)

In *British Insulated Callender's Cables Ltd. v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Prasad and Shri Basu) held that the Faizabad Electric Licence, 1933, and the Jaunpur Electric Licence, 1934, were two separate entities by themselves and their workmen had in no way contributed towards the profits earned by the British Callender's Cables Ltd., from the latter's other activities; and that if a company or individual had several undertakings, then each undertaking should be taken as a separate entity for deciding the question of bonus unless profits of all the undertakings had been pooled together. The L.A.T. reversed the decision of the State tribunal in regard to bonus (except for the first 3 months of 1951) on the ground that there was really no surplus available for distribution. [While taking note of the divergence in the earlier decisions given by the different Benches of the L.A.T., the State industrial tribunal had held that in the event of a loss to the company on account of payment of bonus, the loss could be carried forward and set off against the profits of the following year under the Electricity (Supply) Act, and that payment of bonus was fully permissible under the Electricity (Supply) Act, 1948. On an examination of the accounts of the employers, the State tribunal had come to the conclusion that their 'clear' profits were not enough even for a 'reasonable return', but this inadequacy was due to the too heavy administration for which the

themselves were responsible.] (31-5-55, 1955 II LLJ 578)

In *Ganesh Flour Mills v. Their Workmen*, the L.A.T. (Shri Prasad and Shri Basu) rejected the demand that the profits of the company from its factories in Pakistan should not be included in calculating the available surplus. The L.A.T. observed, "Dividends are paid to the shareholders and commission is paid to the Managing Director on the consolidated profits of the whole company and not on the basis of the profits from the Indian units alone. There is no good reason why a discrimination should be made in case of bonus payable to labour." The L.A.T. added, "The case of the *British Insulated Callender's Cables Limited* is distinguishable. The company in that case had got 14 branches in India, but its principal office for India, Pakistan and Ceylon was at Bombay. The head office which controlled the branches all over the world was situated in London. ...At all events the decision in the case of the *British Insulated Callender's Cables Ltd.* must be taken to have been modified by the decision of a larger Bench of this Tribunal in the case of *Greaves Cotton and Co.* We must, therefore, proceed to determine the available surplus on the basis of the consolidated accounts." (16-7-55, 1955 LAC 538)

In *Herman & Mohatta (B.R.) (India) Ltd. v. Its Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) ruled that where the trading results of the various branches were ultimately collected into a consolidated balance-sheet and where there was an integrated policy and control from the head office, it would be unrealistic to take into account the trading results of the workshops separately for the purpose of deciding whether or not bonus was payable to its workmen. It further ruled that where the company constructed godowns by investing one-third of its capital and where the company had claimed return on the entire capital and also depreciation and expenses incurred for such godowns in the year in question as prior charges the rent earned from such godowns must be included in the profits of the concern for the purpose of ascertaining the available surplus. (1-5-56, 1956 II LLJ 120)

In *Tile Workers' Union, Feroke v. Feroke Tile Works and others*, the L.A.T. (Madras Bench, Shri Vyas and Shri Krishna Rao) ruled that companies which had branches in different parts of the country and where the nature of the business was the same in the head office and the branches and they did business as a single undertaking and maintained a common profit and loss account and the head office directed the policy to be followed by the branches in respect of sales, purchases, capital expenditure, etc., the profit or loss of the entire concern and not of a particular unit would determine the quantum of bonus to be awarded. The L.A.T. added, "Where the parent company had various factories at various places carrying on different and independent business, the workmen employed at one of such factories could not, unless there was 'a nexus of integration', claim bonus on the pooled profits of the parent company from its various undertakings or factories. Their claim must be ascertained by taking that factory as a separate unit." (16-5-56, 1956 II LLJ 135)

In *Inland Steam Navigation Workers' Union v. Inland General, Navigation and other companies and another* the L.A.T. (Calcutta Bench,

Shri Dikshitulu and Shri Krishnamurthi) ruled that where the business of river transport carried on by a company in various States including the territory of Pakistan was treated as one business and consolidated balance-sheet and profit and loss account based on the trading results of the company as a whole were prepared and the shareholders of the company were paid dividends based on the trading profits of the company as a whole, the claim for bonus by workmen employed by that company in one of the States in India must be ascertained on the basis of the trading results of the company as a whole and not on the trading results attributable to its working in that particular State only. (31-5-56, 1956 II LLJ 378)

In *British India Steam Navigation Co., Ltd. v. Its Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) turned down the claim of the workers for bonus on the basis of the company's profits all over the world and ruled that it would be more realistic to determine the surplus on an all-India basis or a larger regional area. (21-6-56, 1956 II LLJ 174)

In *Statesman Employees' Union, Calcutta v. The Statesman Ltd., Calcutta*, the L.A.T. (Calcutta Bench, Shri Siddiki and Shri Harnam Singh) said, "In cases of companies having different branches in different parts of the country, the tribunals have evolved the formula that if there be separate accounts showing profit and loss, bonus would be granted on profits of the individual branch. In other cases, bonus should be allowed on the profits of all branches taken together." (13-7-56, 1957 LAC 701)

In *B.I.C. Ltd. (Cawnpore Cotton Mills Branch and Cawnpore Woollen Mills Branch) v. Their Workmen*, the L.A.T. (Shri Lalkaka and Shri Vyas) held, "Where the assets, liabilities and reserves are not separately allocated by the concern to its individual units and where only test balance-sheets and profit and loss accounts without allocation of assets and liabilities are prepared for each unit annually for the purpose of preparing a consolidated balance-sheet for the company as a whole, it must be held that the profits of the company as a whole should be taken into account for determining the bonus payable and the profits or loss by the units cannot be regarded as separate trading units so as to entitle the workmen thereof to lay claim to bonus on the taking of separate accounts for the respective units." (4-1-57, 1957 I LLJ 575)

#### (e) CALCULATION OF BONUS ON BASIC WAGES

In *Trichinopoly Mills Ltd. v. Their Workmen* cited earlier, the L.A.T. held that the quantum of bonus had ordinarily to be expressed only with reference to basic earnings and the "principle is well established that bonus should be linked with basic wages alone and not with dearness allowance or other things." (25-5-55, 1955 LAC 392)

In *A.D. Cotton Mills Ltd., Quilon v. Their Workmen*, cited earlier, the L.A.T. ruled that it was an accepted principle that the bonus had to be in terms of basic wages and it was not open to the industrial tribunal to determine the amount of bonus payable on the basis of wages inclusive of dearness allowance. (15-5-56, 1957 LAC 192)

## (f) CATEGORY OF WORKERS ENTITLED TO BONUS

In *Associated Cement Companies Ltd. and others v. Their Workmen*, cited earlier, the L.A.T. held that the idea that the officers should not in any event be paid bonus could not be subscribed. It was idle to say that even in a year of prosperity the company could not legitimately pay as part of its expenses bonus to its officers. Disparity between the income of officers and officers must not be taken to mean that as a matter of course whatever was paid as bonus to officers must necessarily be regarded as legitimate expense of the year for the purpose of Full Bench Formula; if the amount was excessive it might have to be pruned to give due effect to the Formula. (27-6-55, 1955 II LLJ 145)

In *Burmah-Shell Employees' Association, Calcutta v. Burmah-Shell Oil Storage and Distributing Co. of India, Ltd., Calcutta and two others*, the L.A.T. (Calcutta Bench, Shri Siddiki and Shri Chakravarty) held, "In the matter of payment of bonus for 1950 both the clerical staff and the working people get bonus at the rate of 3 months' wages, though there was an observation that the working class were on calculation entitled to 4 months'. The effect, however, was that both the groups get bonus at the rate of 3 months' basic wages. During the pendency of the Tribunal proceedings, all the companies made agreements with the union of the workers that bonus would be granted on the basis of 3½ months' wages for the year 1951. We feel that there would be a serious repercussion if we allow to the clerical staff anything in excess of that amount. On the other hand, as the effect of the previous decision had been that both groups got equally, paying to the clerks less than what has been paid to the working class would give rise to a real discontent." The L.A.T. further observed, "We do not at all feel that by allowing bonus equivalent to 3½ months' basic salary to the clerical staff we shall be making them a privileged class." (3-8-55, 1955 LAC 787)

In *William Jacks and Co., Ltd. v. Their Workmen*, the L.A.T. (Madras Bench, Shri Vyas and Shri Mahmood Sheriff) held that in a commercial concern carrying on business of selling machinery the contribution of the workmen to the prosperity of the concern could not be so high as in a manufacturing concern. (31-3-56, 1956 I LLJ 618)

In *Sirdar Carbonic Gas Co., Ltd. v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Basu and Shri Ahmed) held that where the company voluntarily paid bonus for the year in question to some of its workmen (clerical staff), it could not refuse bonus to the other workmen on the ground of lack of available surplus for the same year in question. (26-4-56, 1956 II LLJ 72)

## (g) WHETHER BONUS SHOULD BE UNIT-WISE OR INDUSTRY-WISE

In *Lever Brothers (India) Ltd. and another v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Lalkaka and Shri Khanna) observed that in considering the claim for bonus in industries with a fairly large number of units working in a particular zone, it might be considered desirable, if possible, to prevent marked disparity between the bonus payable by various units of the industry operating in the same zone to their respective workers and this would be possible at least in cases where a large number of such units showed comparable surplus profits. This was necessary for ensuring that the

grant of a very large amount by way of bonus did not give rise to fresh problems in the vicinity by creating industrial discontent; while at the same time, the general principle that the question of bonus had to be primarily decided unit-wise and not industry- and zone-wise must not be lost sight of. On the facts and circumstances of the case, the award of 4½ months' basic earnings as bonus by the industrial tribunal was increased to 5 months' basic earnings. (31-10-55, 1955 II LLJ 723)

### WAGES

In *Plywood Products v. Their Workmen*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri Prasad), while not dissenting from the principles laid down in *Buckingham & Carnatic Mills case*, set aside the award of the industrial tribunal, raising the minimum wages from Rs. 36 to Rs. 39, on the ground that unlike the textile and sugar industries, the plywood industry was in a nascent stage. (10-12-54, 1955 I LLJ 308)

In *Millowners' Association, Bombay v. Rashtriya Mill Mazdoor Sangh*, the Appellate Tribunal (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) said that the existing state of the textile industry was not such as could be called upon to bear additional burdens and therefore it followed that any change in the existing wage structure needed to be justified, that a balance must be struck between the needs of labour and the capacity of the concern to pay and one must not be "altogether unmindful of the existence of the consumer". (25-5-55, 1955 II LLJ 36)

The long-term nature of a wage settlement was brought out by the Appellate Tribunal (Madras Bench, Shri S. Govinda Menon and Shri Lal-kaka) in *Aspinwall & Co., Ltd., v. Their Workmen*, where it held that once the basic wage was fixed in a manner which did not suggest any unfairness, it should stand for a reasonably long time, irrespective of the fact whether the original fixation was effected through arbitration, conciliation or adjudication. (30-6-55, 1955 II LLJ 269)

### DISMISSAL AND REINSTATEMENT

In *Bali Rai and another v. Patna Electric Supply Co., Ltd.*, the L.A.T. (Calcutta Bench, Shri R.C. Mitter and Shri L.K. Jha) held that a reprehensible act on the part of the workmen committed outside the working hours and outside the establishment might be regarded as an act of subversive discipline, if it was either (1) inconsistent with the fulfilment of the express or implied conditions of service, or (2) directly linked with the general relationship of the employer and the employee, or (3) directly connected with the contentment or comfort of the men at work, or (4) in the nature of having a material bearing on the smooth and efficient working of the concern. (13-9-54, 1955 I LLJ 164)

In *Lakshmi Sugar Mills Co., Ltd v. Sri Bal Govind*, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri Prasad) awarded substantial compensation rather than reinstatement for wrongful dismissal, considering that the employee concerned was physically unfit to undertake normal duties and had

refused to submit to medical examination. (10-1-55, 1955 LAC 211)

In *Lakshmi Devi Sugar Mills Ltd. v. Jadunandan Singh*, the management had retrenched the employee for his using abusive and insulting language in a letter to them as an official of the workers' union. The industrial tribunal ordered reinstatement. In appeal, the L.A.T. (Lucknow Bench, Shri Waliullah and Shri Prasad) set aside the lower tribunal's award on grounds of misconduct by the employee. (17-3-55, 1955 II LLJ 250)

In *Kohinoor Saw Mills Company v. K. Narayanan*, the L.A.T. (Madras Bench, Shri Pillai and Shri Vyas) observed that the reinstatement of the worker with back wages, as decided by the lower tribunal, was just and proper. The Appellate Tribunal added that mere refusal to accept warning notice could not be considered to be insubordination deserving punishment of dismissal. The workman had been warned and suspended for inefficiency and insubordination and subsequently dismissed for the same which, the L.A.T. felt, was not valid and proper. (23-6-55, 1955 II LLJ 685)

In a dispute between Panna Lal Pathak and others (Suti Mill Mazdoor Union) and *Elgin Mills Company, Ltd.*, the L.A.T. (Shri Ansari and Shri Govindan) held that where the concerned workman in the course of discussion with his superior officer on a question of sales policy had put forward his viewpoint in a raised voice, and when the superior officer had asked him to "shut up" and "get out" he had replied that he would not shut up and would also not go out, his refusal to obey the orders could not be considered to be wilful disobedience of lawful and reasonable orders of the superior officer deserving the punishment of dismissal. Such orders could not be considered either lawful or reasonable. In this case on account of strained relationship between the parties, the relief of compensation in lieu of reinstatement (besides the wages from the date of dismissal to the date of the award) was held reasonable. (12-9-55, 1955 LAC 762)

In *Chopra Motors v. Their Workmen*, the L.A.T. (Calcutta Bench, Shri Gan and Shri Krishnamurthi) said that an employer could not terminate the services of a workman except in a lawful manner and when the dismissal was not valid, the workman must be deemed to have never been dismissed at all and so continued in service and the normal relief in such cases was reinstatement except when it was ruled out in the circumstances of a particular case. When reinstatement was not ordered, wages must be paid for the full period from the date of dismissal up to the date of award denying reinstatement unless circumstances existed for excluding such relief. (16-7-56, 1957 II LLJ 162)

In *Amarsinhji Mills Ltd., and others v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Vyas) ruled that when the piece-rate wages of weavers were standardised and where, through no fault of theirs, they were not able to earn their standard wages every day, they should be compensated for the loss in their wages. (3-5-57, 1957 II LLJ 151)

#### PARTICIPATION IN STRIKE

In the dispute between *Dalmia Cement (Bharat) Ltd.* and their workers, the L.A.T. (Madras Bench, Shri Pillai and Shri Vyas) awarded the workmen

wages for the period of strike which was justified as a protest against the sudden and premature retrenchment of certain workers and was not illegal. (25-6-55, 1955 II LLJ 466)

In *Caltex (India) Ltd., Madras v. Their Workmen*, the L.A.T. (Madras Bench, Shri Menon and Shri Lalkaka) reiterated that when a strike, though illegal, was started by the workmen in respect of legitimate and *bona fide* grievances and when it was conducted and carried out in peaceful manner without indulging in acts of violence or subversive activities, participation in such a strike could not be considered to be a ground for dismissal. (28-7-55, 1955 II LLJ 693)

In the dispute between *Vijaykumar Mills Ltd., Palni* and their workers, the L.A.T. (Madras Bench, Shri Pillai and Shri Vyas) overruled the orders of the industrial tribunal and declared that the dismissal of the workman was wrongful as no enquiry had been held into the charges against him as required by the Standing Orders relating to the mills. The Appellate Tribunal remarked that even on termination of services of a worker by notice for misconduct, if he should choose to send a reply to it and thus challenge the act complained of, it was the bounden duty of the management to serve him with a regular charge-sheet, obtain his explanation and make an enquiry, as otherwise the termination of services was wrongful, and the worker would be entitled to reinstatement with back wages. (9-12-55 1956 LAC 62)

In *Adhir Ghose v. Patna Electric Supply Co., Ltd.*, the L.A.T. (Calcutta Bench, Shri Siddiki and Shri Singh) ruled that the dismissal of Shri Ghose, an active union worker, was a clear case of victimisation as it was not substantiated by the evidence and the lower tribunal had not considered the employee's plea of *mala fide* on the part of the employer. (30-12-55, 1956 II LLJ 530)

In *Appollo Mills Ltd., and others v. Ballu Govind*, the L.A.T. (Bombay Bench, Shri Vyas and Shri Krishnamurthi) held that where a large number of workmen ceased work simultaneously, the presumption was that they did so in concert. It could not be contended that such conduct amounted only to adopting a go-slow policy. (28-2-57, 1957 II LLJ 55)

In *Dalmia Cement (Bharat) Ltd. v. Dalmia Cement Workers' Union and others*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Vyas) decided that as the discharge was proper and justified, the stay-in-strike must be held to be unjustified and the workmen who had participated in the strike could not claim wages for the strike period. It set aside the award of the industrial tribunal directing payment of wages for the strike period. (28-2-57, 1957 II LLJ 56)

In *Indian Hume Pipe Company, Ltd. v. The Rashtriya Indian Hume Pipe Mazdoor Sangh and others*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Vyas) held that where some of the workmen had refused to receive attendance cards in order to comply with the card system for marking attendance sought to be re-introduced by the management and had stayed away from their work in common understanding, their action must be held to amount to "strike" and also to "illegal strike" under the Madhya Pradesh Industrial Disputes Act. The "change" sought to be introduced by the management whether legal or illegal was immaterial to the

determination of the question of the "illegality of the strike". (13-5-57 1957 II LLJ 67)

### GRATUITY

In *National Electrical Industries Ltd. v. Its Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) said, "Even though retrenchment relief has been given by statute, it does not prevent a tribunal from giving a scheme of gratuity in which a provision has been made for relief in the event of retrenchment." (31-8-56, 1957 II LLJ 430)

In *Mettur Industries Ltd. v. Their Workmen*, the L.A.T. (Madras Bench, Shri Lalkaka and Shri Vyas) ruled, "Whenever the financial condition of a concern permits the introduction of a gratuity scheme, it should be introduced for the benefit of the workers irrespective of the existence or otherwise of any provident fund scheme, statutory or voluntary, as the two schemes for provident fund and gratuity are meant to serve two different purposes." (29-9-56, 1957 LAC 288)

In *New Shorrock Spinning and Manufacturing Company, Ltd. and others v. Textile Labour Union and others*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Das Gupta) ruled that wherever a concern had the capacity to give two retirement benefits of provident fund and gratuity, there was no bar to their being given together. The factors to be taken into account in fixing the amount of gratuity would include the provident fund scheme available to the workmen, the scheme for the payment of retrenchment compensation under the Industrial Disputes Act, and the schemes of gratuity prevailing in the industry in the vicinity. (12-8-57, 1957 II LLJ 408)

### DEFINITION OF THE WORKMAN

In *Burmah-Shell Oil Storage and Distributing Co. of India, Ltd. (Madras and Hyderabad branches) v. Their Workmen*, the L.A.T. (Bombay Bench, Shri Jeejeebhoy and Shri Reuben) ruled that the Lady Secretaries employed by the company were workmen as defined under the Industrial Disputes Act, while the Depot Superintendents and Assistant Depot Superintendents were not so. (16-6-55, 1955 II LLJ 153)

In *Bank of Cochin Ltd. v. P. K. Favoo and others*, the L.A.T. (Madras Bench, Shri Menon and Shri Merchant) held that the Chief Accountant of the bank was not a workman under the Industrial Disputes Act. (30-8-55, 1955 II LLJ 595)

## APPENDIX—IV

### IMPORTANT SUPREME COURT DECISIONS CONCERNING THE L.A.T. FULL BENCH FORMULA

#### THE NATURE OF BONUS

In *Sree Meenakshi Mills Ltd. and another v. Their Workmen* (1958 I LLJ 239), the Supreme Court said: "It has been held by this Court in *Muir Mills Co., Ltd. v. Suti Mill Mazdoor Union, Kanpur* (1955 I LLJ 1), that the term 'bonus' is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained". ... "This decision is based on the view that both labour and capital contribute to the earnings of the industrial concern and so it is but fair that labour should derive some benefit if there is surplus available for that purpose. Even so, the claim for bonus cannot be effectively made unless two conditions are satisfied; the wages paid to workmen fall short of what can be properly described as living wages; and the industry must be shown to have made profits which are partly the result of the contribution made by the workmen in increasing production."

In *Associated Cement Companies, Ltd., Dwarka, Bombay and others v. Their Workmen* (AIR 1959 SC 967), the Supreme Court noted, "As both capital and labour contribute to the earnings of the industrial concern, observed the Appellate Tribunal, it is fair that labour should derive some benefit if there is a surplus after meeting prior or necessary charges. The Appellate Tribunal was also of the view that where the goal of living wages had been attained, bonus, like profit-sharing, would represent more as the cash incentive to better efficiency and production, but where the industry had not the capacity to pay a living wage bonus must be looked upon as the temporary satisfaction wholly or in part of the needs of the employee." [This view was repeated by the Supreme Court in *State Bank of India and others v. Their Workmen*. (1959 II LLJ 205)] The Supreme Court added: "The formula for awarding bonus to workmen is based on two considerations; first that labour is entitled to claim a share in the trading profits of the industry because it has partially contributed to the same; and second that labour is entitled to claim that the gap between its actual wage and the living wage should within reasonable limits be filled up. The concept of labour's contribution to the profits of the industry has reference to the contribution made by the employer and the workmen taken together as a class; and so it would not be relevant to inquire which section of labour has contributed to what share of the profits. The broad idea underlying this concept is that the capital invested by the employer and labour contributed by workmen jointly produce the profits of an industry. This does not necessarily mean that, in the industry in question, labour must actually manufacture or produce

goods, though in the case of manufacture and production of goods contribution of labour is patent and obvious."

In *State Bank of India and others v. Their Workmen* (1959 II LLJ 205), the Supreme Court said:

"The Labour Appellate Tribunal recognised that where the goal of living wages had been attained, bonus like profit-sharing in the technical narrow sense would represent more the cash incentive to greater efficiency and production. The conception of the living wage itself is a growing conception, and the goal has been reached in very few industries, if any, in this country. ..."

"There can be now no doubt, however, that profit bonus, in the industrial sense in which we now understand it, is a share in the profits of the company; it is labour's share of the contribution which it has made in the earning of the profits. The two grounds on which it has been contended that bonus is not a share in the profits are (1) that it is not a fixed or certain percentage of the available surplus of profits and (2) it partakes of the nature of a contingent, supplementary wage. These two grounds weighed considerably with the majority of members of the Labour Appellate Tribunal who expressed the view that S. 10 of the Banking Act did not stand in the way of granting bonus to bank employees, because bonus according to them was not a share in the profits of the company. We do not think that either of these two grounds is valid. The first ground arises out of a confusion between the expression 'takes the form of a share in profits' and the expression 'profit-sharing' used in a narrow, technical sense. It is undoubtedly true that the bonus formula does not lay down any fixed percentage which should go to labour out of the available surplus. The share of labour will depend on a number of circumstances; but once the amount which should go to labour has been determined, it is easy enough to calculate what proportion it bears to the whole amount of available surplus of profits. ..."

"The second ground also appears to us to be equally untenable. Bonus in the industrial sense as understood in our country does come out of the available surplus of profits, and when paid it fills the gap, wholly or in part, between the living wage and the actual wage. It is an addition to the wage in that sense whether it be called contingent and supplementary. None the less, it is labour's share in the profits, and as it is a remuneration which takes the form of a share in profits, it comes within the mischief of S. 10 of the Banking Act. ..."

In *Mathurdas Kanji and others v. L.A.T. and others* (AIR 1958 SC 899), the Supreme Court noted, "Bonus schemes vary with the conditions obtaining in different industries. Though bonus is a cash payment made to the workmen in addition to the wages, it is no longer considered as an *ex gratia* payment. ... One of the categories of bonus is described as 'incentive bonus'. The name indicates that it is given as a cash incentive to greater effort on the part of the labour. But the essential condition for the payment of

incentive bonus, just like any other kind of bonus, is that the industry concerned must earn profits part of which is due to the contribution which the workmen made in increasing production." (The Supreme Court set aside the award by the L.A.T. of the 45% of the incentive bonus received by the appellants from the Government on the ground that no evidence had been given to prove that the appellants had earned any profits.)

In *M/s Titagarh Paper Mills Co., Ltd. v. Its Workmen* (AIR 1959 SC 1095), the Supreme Court held, "Generally speaking, payment of production bonus is nothing more nor less than a payment of further emoluments depending upon production as an incentive to the workmen to put in more than the standard performance". "...The nature of this bonus, ...is entirely different from the nature of profit bonus under the Full Bench Formula and we do not see why if there is an available surplus of profits according to the Full Bench Formula, the workmen should not get profit bonus in accordance with that Formula."

In *Ispahani Ltd., Calcutta v. Ispahani Employees' Union*, the Supreme Court said: "The claim for Puja bonus in Bengal is based on either of two grounds. It may either be a matter of implied agreement between employers and employees creating a term of employment for payment of bonus or secondly even though no implied agreement could be inferred it might be payable as a customary bonus. The tests laid down by Labour Appellate Tribunal in *Mahalakshmi Mills Ltd., Calcutta* (1952 II LLJ 635) for inferring that there was an implied agreement for grant of such a bonus must be held to be correct and it is necessary that they should all be satisfied before bonus of this type could be granted." (1959 II LLJ 4)

### THE COMPUTATION OF THE AVAILABLE SURPLUS

#### (a) BONUS AS A PRIOR CHARGE

In *Associated Cement Companies case*, cited earlier, the Supreme Court held, "Some tribunals seem to work out notionally the amount of bonus which they think can be awarded and place that amount higher up in the process of making calculations before the income-tax payable is determined. The inevitable consequence of this procedure is to make the amount of tax proportionately less. We wish to make it clear that this procedure should not be followed. As we have already pointed out, in directing distribution of the available surplus the tribunal has to take into account the rebate of income-tax to which the employer is entitled on the amount of bonus paid to his workmen but that on principle is different from placing the amount of bonus immediately after depreciation in the working of the formula". (AIR 1959 SC 967)

In *Crompton Parkinson (Works) Private Ltd., Bombay v. Its Workmen* (AIR 1959 SC 1089), the Supreme Court noted:

"The bonus formula enjoins the tribunals to arrive at the available surplus after providing for certain prior charges mentioned therein and then to determine, after taking into consideration all material circumstances, how that available surplus should be distributed between the three interests, namely, the industry, the shareholders and the workmen. To deduct bonus as a prior charge even before

the recognised items of prior charges appears to us to put the cart before the horse. Such a process is certainly not giving effect to the bonus formula but amounts to *ad hoc* determination which may vary according to the length of the proverbial foot of the Lord Chancellor and is bound to lead to chaos and industrial unrest. The bonus formula was evolved by the Labour Appellate Tribunal as far back as 1950 and it has been generally approved by this Court in more decisions than one and what is more it has worked fairly satisfactorily. In our judgement in the appeals of *Associated Cement Companies Ltd. v. Its Workmen* (AIR 1959 SC 967), we have deprecated such departure from the bonus formula by individual tribunals, for clearly such departure is not conducive to the harmonious and peaceful relations between the workmen and their employers."

(b) EXTRANEous PROFITS

In *Associated Cement Companies case* (AIR 1959 SC 967), the Supreme Court said: "Where the employer makes profits in the course of carrying on his trade or business, it would be unreasonable to inquire whether each one of the items of the said profit is related to the contribution made by labour. In such matters the tribunal must take an overall, practical and commonsense view. Thus it may be stated that as a rule the gross profits appearing at the foot of the statement of the profit and loss account should be taken as the basic figure while working out the formula."

In *Tata Oil Mills Co., Ltd. v. Its Workmen and others* (1959 II LLJ 250), the Supreme Court held that income from rent from the quarters built for workmen, from light and power supplied, from estate revenue (coconut groves), and from profits on sale of empty barrels and sale proceeds of tin cans, scraps, logs, planks, gunnies, etc. arose in the normal course of business and could not be treated as extraneous income.

(c) DEPRECIATION AND INCOME-TAX DEDUCTIONS

The Supreme Court in *Sree Meenakshi Mills Ltd. and another v. Their Workmen* (1958 I LLJ 239) upheld the stand taken by the L.A.T. Special Full Bench in *U.P. Electric Supply Co., Ltd. etc. Electric Supply Undertakings v. Their Workmen* (1955 II LLJ 431) that only normal depreciation including multiple shift depreciation but not initial or additional depreciation should rank as prior charge in applying the Full Bench Formula for determination of the available surplus. This was also affirmed in *Indian Hume Pipe Co., Ltd. v. Their Workmen*. (1959 II LLJ 357)

In *Associated Cement Companies Ltd., Dwarka, Bombay and others v. Their Workmen* (AIR 1959 SC 967), the Supreme Court pointed out:

"What the Full Bench (in the case of *U.P. Electric Supply Co., Ltd. etc.*) intended to treat as depreciation for the purpose of the formula was a notional amount of normal depreciation; in order to avoid any future doubt or confusion, the judgement in the case has set out the manner in which this notional formula depreciation has to be worked out. Since this decision was pronounced it is the notional

normal depreciation that is deducted from the gross profits in working the formula. It seems to us that the view taken by the Full Bench is wholly consistent with the basic idea of social justice on which the original formula is founded. The relevant provisions of the Income-tax Act allowing further depreciation are based on considerations which have no relevance to the original formula; indeed, as the Full Bench has pointed out, if the said two items of depreciation are allowed to be deducted from the gross profits it would in a majority of cases defeat the objects of the formula itself. We would accordingly hold that the depreciation which has to be deducted from the gross profits should be the notional normal depreciation".

The Supreme Court added:

"In our opinion, having regard to the basis of the formula and the manner in which the other items of the formula are required to be worked out, it would not be reasonable to allow the employer to claim under the item of income-tax an additional amount in respect of the two further depreciations which are expressly allowed to him under S. 10(2) (vi) of the Income-tax Act. It is clear that the amount determined under this item would not represent the actual tax which the income-tax department will recover from the employer. In that sense it would always be a notional amount; but in calculating even this notional amount it would be unfair and unjust to ignore the concessions allowed to the employer by S. 10(2) (vi). The creation of a fund of income-tax reserve may conceivably lead to unnecessary complications. Besides, if on principle the further depreciations allowed by the Income-tax Act are treated as inadmissible under the formula and so are excluded from consideration, it would be substantially inconsistent with the object of such exclusion to allow the employer to claim to tax in respect of the said amounts of the two depreciations."

The Supreme Court also said:

"In our opinion, once it is realised that in working out the formula the bonus year is taken as a unit self-sufficient by itself, the decisions of the Labour Appellate Tribunal in regard to the refund of excess profits tax and the adjustment of the previous year's depreciation and losses against the bonus year's profits must be treated as logical and sound."

#### (d) RETURN ON CAPITAL AND RESERVES

In *Associated Cement Companies* case, cited above, the Supreme Court observed as follows:

"In *Workmen of Assam Co., Ltd. v. Assam Co., Ltd.* (AIR 1958 SC 655), this Court held that interest allowed by the tribunal at 7 per cent on paid-up capital and confirmed by the Labour Appellate Tribunal was justified because 'an industry connected with agriculture like the tea industry is exposed to greater risks than any other industry such as weather, pests in the plants and gradual deterioration of the soil.' On the other hand in *Ruston and Hornsby*

*India Ltd. v. Their Workmen* (1955 I LLJ 73) the Labour Appellate Tribunal allowed only 4 per cent return on the part of paid-up capital represented by bonus shares for the year in which such shares were issued and observed that 'for subsequent years no distinction between it and other paid-up capital represented by paid-up shares should be made'. Similarly, in regard to reserves or depreciation used as working capital interest has been allowed either at 4 per cent or at 3 per cent or even at 2 per cent according to the relevant circumstances. ...."

"In dealing with this aspect of the matter it is relevant to point out that no distinction has been made by tribunals between reserves used as working capital and depreciation fund similarly used. In *Millowners' Association, Bombay v. Rashiriyah Mill Mazdoor Sangh* (1952 I LLJ 523), when labour objected to the depreciation fund earning any return even if it was utilised in or about the business of the year, the Labour Appellate Tribunal overruled the objection and observed :

'No essential difference could be made between the depreciation fund and any other fund belonging to the company which could be invested so as to earn a return'.

"It is thus clear that what is material is not the origin of the fund. It is the fact that the fund in the hands of the concern has been used as working capital that justified the claim for an adequate return on it. We think it is commonsense that if the concern utilises liquid funds available in its hands for the purpose of meeting its working expenses rather than borrow the necessary amounts it is entitled to claim some reasonable return on the funds thus used. .... It would thus be noticed that in working out these two items under the formula there is no fixed or rigid rule about the rate of interest which can be claimed and awarded. It is also clear that if any fund is used by the employer for the purpose of expanding his business he is not entitled to claim any return on such fund under those items."

In *Tata Oil Mills Co. case*, cited earlier, the Supreme Court noted that when "a return on reserves used as working capital is allowed, there is no reason why, if there is in fact money available in the depreciation reserve and if that money is actually used during the year as working capital, a return should not be allowed on such money also." (1959 II LLJ 250) This view was re-affirmed in *Anil Starch Products Ltd. v. Ahmedabad Chemical Workers' Union and others* (AIR 1960 SC 1346), in *Petlad Turkey Red Dye Works Co., Ltd. v. Dyes & Chemical Workers' Union and others* (1960 I LLJ 548), in *Mysore Kirloskar, Ltd. v. Its Workers* (1961 II LLJ 657), and in *Southern Indian Millowners' Association and others v. Coimbatore District Textile Workers' Union* (1962 I LLJ 223).

In *Indian Hume Pipe Company, Ltd. v. Their Workmen* (1959 II LLJ 357), cited earlier, the Supreme Court said that the return of 6 per cent on capital, prescribed in the Formula, was not inexorable and the industrial tribunal could, if the circumstances would warrant, vary the rate of interest either by increasing or decreasing the same. The Supreme Court held that if

the employer were to prove that depreciation fund or a portion of it had been used as working capital for the business during the year in question, 4 per cent return on the same should be provided for as a prior charge.

(e) REHABILITATION

The Full Bench Formula provided a sum for rehabilitation as a 'prior charge' besides the statutory depreciation. This was fixed on a notional basis and depended upon a multiplier which was used to find out the prices of machinery to be replaced, and a divisor based on the useful life of the machinery to find out what sum should be provided each year for rehabilitation.

In the *State of Mysore v. The Workers of the Kolar Gold Mines* (AIR 1958 SC 923), the Supreme Court summarised and approved of the case law as evolved by the L.A.T. with regard to rehabilitation. The Supreme Court noted, "It has been observed by the Labour Appellate Tribunal in *Ganesh Flour Mills Co., Ltd., Kanpur v. Ganesh Flour Mills Staff Union*, (1952 I LLJ 524) that though the employer is entitled to claim deductions from the gross profits in respect of rehabilitation as a matter of right it is difficult to lay down any general rule applicable to each and every industry". The Supreme Court concluded: "In the application of the principles discussed in these decisions, industrial adjudication cannot adopt an inflexible or rigid approach; these principles will have to be applied with such modifications and adjustments as may be found necessary, just and expedient having regard to the evidence led by the parties before the tribunal and having regard to the special needs and requirements to the industry. This position appears to be fully recognised by the Labour Appellate Tribunal in these decisions themselves."

The Supreme Court, in *Associated Cement Companies case* (AIR 1959 SC 967) said: "It must be borne in mind that, in adjusting the claims of industry and labour to share in the profits on a notional basis, it would be difficult to repel the claim of the industry that a provision should be made for the rehabilitation of its plant and machinery from the trading profits. On principle the guaranteed continuance of the industry is inasmuch for the benefit of the employer as for that of labour; and so reasonable provision made in that behalf must be regarded as justified."

The Supreme Court added, "In considering the claim for rehabilitation it is first necessary to divide the blocks into plant and machinery on the one hand and other assets like buildings, roads, railway-sidings, etc., on the other. Then the cost of these separate blocks has to be ascertained and their probable future life has to be estimated. Once this estimate is made it becomes possible to anticipate approximately the year when the plant or machinery would need replacement; and it is the probable price of such replacement on a future date that ultimately decides the amount to which the employer is entitled by way of replacement cost. This problem can be considered itemwise where the industry does not own too many factories and itemwise study of the plant and machinery is reasonably possible; but if the industry owns several factories and the number of plants and machines is very large it would be difficult to make a study of the replacement costs itemwise, and in such a case the study has to be blockwise. ... *Prima facie* it may appear that it is the price level prevailing in the bonus year that should be treated as

relevant; but if the relevance of the evidence about the price is limited only to the bonus year, it may hinder rather than help the process of a satisfactory determination of the probable cost of replacement. What the tribunal has to do in determining such cost is to project the price level into the future and this can be more satisfactorily done if the price level which has to be projected into the future is determined not only in the light of the prices prevailing during the bonus year but also in the light of subsequent price levels. ...The price level during the bonus year would no doubt be admissible; but that alone should not be taken as the basis for decision...The claim for rehabilitation covers not only cases of replacement pure and simple but of rehabilitation and modernisation...(but) expansion of the plant and machinery is not included in this item". The Supreme Court then explained how a suitable multiplier and divisor should be used to arrive at the annual requirements of rehabilitation.

In *M/s Peirce, Leslie and Co., Ltd., Kozhikode v. Its Workmen* (AIR 1960 SC 826), the Supreme Court affirmed that the replacement value should be calculated on the basis of what would be required to replace the fixed assets at date when replacement would be done.

In *Associated Cement Companies case*, and subsequently in *Khandesh Spinning and Weaving Mills Co., Ltd. v. Rashtriya Girni Kamgar Sangh and others* (1960 I LLJ 541), the Supreme Court ruled that reserves reasonably earmarked for specific purposes should not be deducted from total estimated rehabilitation costs. It affirmed that the deduction of five per cent of the cost price of the block (as breakdown value of the plant and machinery), depreciation and liquid reserves available to the employer and the unutilised rehabilitation allowed in the previous years would be admissible in determining the total amount of rehabilitation.

#### (f) ACCEPTANCE OF BALANCE-SHEET AND PROFIT AND LOSS ACCOUNTS

In *Associated Cement Companies Ltd., Dwarka, Bombay and others v. Their Workmen* (AIR 1959 SC 967), the Supreme Court held that as a general rule, the amount of gross profits appearing at the foot of the statement of the profit and loss account would be accepted, without submitting the statement of profit and loss account to a close scrutiny. If, however, it appeared that entries had been made on the debit side deliberately and *mala fide* to reduce the amount of gross profits, it would be open to the tribunal to examine the question and if it was satisfied that the impugned entries had been made *mala fide*, it might disallow them. The Supreme Court further held that it would likewise be open to the parties to claim the exclusion of items either on the credit or on the debit side on the ground that the impugned items were wholly extraneous and entirely unrelated to the profits of the trading year. In considering such a plea the tribunal must resist the temptation of dissecting the balance-sheet too minutely or of attempting to reconstruct it in any manner.

In *Tata Oil Mills Co., Ltd. v. Its Workmen* (1959 II LLJ 250), the Supreme Court accepted the affidavit filed by the employer's representative about the use of the depreciation reserves as working capital, which had not been challenged before the industrial tribunal. The Supreme Court added:

"It would however be open to the workmen in future to show by proper cross-examination of the company's witnesses or by proper evidence that the amount shown as depreciation reserve was not available in whole or in part to be used as working capital and that whatever may be available was not in fact so used in the sense explained above."

In *Petlad Turkey Red Dye Works Co., Ltd. v. Dyes and Chemical Workers' Union and others* (1960 I LLJ 548) the Supreme Court noted, "...while (there) is no reason to suspect every statement made in these balance-sheets, the position is clear that we cannot presume the statements made therein to be always correct. The burden is on the party who asserts a statement to be correct to prove the same by relevant and acceptable evidence. A mere statement in the balance-sheet is of no assistance to show...that any portion of the reserve was actually utilised as working capital."

In *Trichinopoly Mills Ltd. v. National Cotton Textile Mills Workers' Union* (1960 II LLJ 46), the Supreme Court held that the balance-sheet did not by itself prove the fact of utilisation of any reserve as working capital and that the law required that such an important fact as the utilisation of a portion of the reserve as working capital had to be proved by the employer by evidence given on affidavit or otherwise and after giving an opportunity to the workmen to contest the correctness of such evidence by cross-examination.

#### THE QUANTUM OF BONUS

The Supreme Court, in *Associated Cement Companies v. Their Workmen* (AIR 1959 SC 967) noted:

"It is not seriously disputed that three parties are entitled to claim a share in this available surplus; labour claims bonus from it, the industry claims a share for the purpose of its expansion and other needs, and shareholders claim a share by way of additional return on capital invested by them. In the case of *Millowners' Association, Bombay* (1952 I LLJ 518), where the formula was evolved, out of the available surplus of Rs. 2.61 crores, Rs. 2.16 crores was distributed by way of bonus leaving a balance of 0.45 crores with the industry.

"In *Trichinopoly Mills Ltd. v. National Cotton Mills Workers' Union* (1953 II LLJ 361), the available surplus was found to be Rs 34,660 and out of it Rs. 30,000 was ordered to be distributed as bonus to the workmen. These two and other similar instances, however, cannot be pressed into service for the purpose of evolving any general rule as to the ratio or proportion in which the available surplus should be distributed. The ratio of distribution would obviously depend upon several facts: what are the wages paid to the workmen and what is the extent of the gap between the same and a living wage? Has the employer set apart any gratuity fund? If yes, what is the amount that should be allowed for the bonus year? What is the extent of the available surplus? What are the dividends actually paid by the employer and what are the

probabilities of the industry entering upon an immediate programme of expansion? What dividends are usually paid by comparable concerns? What is the general financial position of the employer? Has the employer to meet any urgent liability such as redemption of debenture bonds? These and similar considerations will naturally determine the actual mode of distribution of the available surplus. In this connection labour's claim to fill up the gap between the wage actually paid to it and the living wage has an important bearing on the decision of this point. Industry's claim for paying additional return on capital and for making additional provision for expansion would also have to be considered. The fact that the employer would be entitled to a rebate of income-tax on the amount of bonus paid to his workmen has to be taken into account and in many cases it plays a significant part in the final distribution. Therefore, in our opinion, once the available surplus is determined, the tribunal should, in the light of all relevant circumstances, proceed to make an award directing the payment of a fair and just amount to labour by way of bonus. If the formula is thus worked reasonably it would in a large majority of cases succeed in achieving its principal object of doing justice both to labour and industry."

The Supreme Court added:

"Before we part with the question of working the formula it is necessary to observe that the practice adopted by some tribunals in giving the amount of bonus a priority in the calculations is not justified. Logically it is only after all the prior charges have been determined and deducted from the gross profits that available surplus can be ascertained; and it is only after the available surplus is ascertained that the question of awarding bonus can be considered."

In *Management of Jawahar Mills Ltd. and another v. Their Workmen and others* (AIR 1960 SC 1323), the Supreme Court, increasing the additional bonus of  $8\frac{1}{2}$  % of yearly basic wages awarded by the L.A.T., by another  $2\frac{1}{2}$  %, noted: "In the present case, however, it seems to us on a consideration of all the circumstances that the interests of justice require some modification of the Appellate Tribunal's award. While no inflexible rule can possibly be laid down as regards the proportion of distribution of the available surplus, a workable rule, where the surplus is not considerable, very often is that when no other evidence as regards the relevant factors is available the distribution should be such as to leave to the employer and the industry on the one hand and the workmen on the other, approximately equal benefits."

In *Burn & Co., Ltd. and another v. Their Employees* (1960 I LLJ 858), the Supreme Court explained that the above working rule was intended to be confined to cases where the surplus was not considerable and that no inflexible rule could possibly be laid down as regards the distribution of the available surplus under the Full Bench Formula.

In *Trichinopoly Mills Ltd. v. National Cotton Textile Mills Workers' Union and others* (1960 II LLJ 46), the Supreme Court pointed out that out of the amount of Rs. 2,22,473 found as available surplus for the year in question the L.A.T. had directed the employer to distribute the amount of

Rs. 1,28,000 by way of bonus for 1951 which came to 8 months' basic wages, leaving the amount of Rs. 94,473 in the hands of the employer. The Supreme Court added that in the appeal by special leave against the decision of the L.A.T. it had, *inter alia*, been contended that the grant of such bonus was too high on the figures mentioned above as the L.A.T. had failed to take into consideration the relevant factors in fixing the quantum of bonus. Dismissing the said appeal the Supreme Court held that distribution of available surplus was to be determined in the light of several relevant facts mentioned in the decision in *Associated Companies case*. (AIR 1959 SC 967) As the record of the instant case contained no material to assist the Court in applying the said tests to the facts of the case, it would be difficult for the Court to decide as to what should be the proper amount of bonus for the year in question. It was true that in the available surplus, three claims had to be adjusted, the claim of the employer, the claim of the shareholders and the claim of the labour. But in the circumstances mentioned above, i.e. the paucity of the relevant material on record, the only thing that could be done would be to direct that the award in question should not be taken as a precedent in deciding similar disputes in the future.

In *Standard Vacuum Refining Co. of India. Ltd. v. Its Workmen* (AIR 1961 SC 895), the Supreme Court pointed out:

"It is well known that the problem of wage structure with which industrial adjudication is concerned in a modern democratic State involves on the ultimate analysis to some extent ethical and social considerations. The advent of the doctrine of a welfare State is based on notions of progressive social philosophy which have rendered the old doctrine of *laissez faire* obsolete... As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. ...It is because of this socio-economic aspect of the wage structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as the minimum basic wage. If he cannot pay such a wage he has no right to engage labour, and no justification for carrying on his industry."

The Supreme Court added:

"The concept of a living wage is not a static concept; it is expanding and the number of its constituents and their respective contents are bound to expand and widen with the development and growth of national economy. That is why it would be impossible to attempt the task of determining the extent of the requirement of the said concept in the context of today in terms of rupees, annas and pies on the scanty material placed before us in the present proceedings. We apprehend that it would be inexpedient and unwise to make an effort to concretise the said concept in monetary terms with any degree of definiteness or precision even if a fuller enquiry is held.

Indeed, it may be true to say that in an underdeveloped country it would be idle to describe any wage structure as containing the ideal of the living wage, though in some cases wages paid by certain employers may appear to be higher than those paid by others...However, taking the broad aspect of the concept of the living wage into consideration, and bearing in mind its idealistic and expanding character, it would be possible, and not very difficult either, to say about a given wage such as the one with which we are concerned in the present appeal that it does not reach the standard of a living wage."

The Supreme Court ruled:

"In our opinion it would be inadvisable and inexpedient to put such a ceiling in the matter of awarding bonus. It is now well established that in awarding bonus industrial adjudication has to take into account the legitimate claims of the industry, its shareholders who are entitled to claim a return on the investment made by them and the workmen. This Court has consistently refused to lay down any rigid rule or formula which would govern the distribution of the available surplus between the three claimants. The decision of this question must inevitably depend on a proper assessment of all the relevant facts. If wages are small and the profits are high then the workmen would be entitled to have a high rate of bonus. Indeed, if an employer makes consistently high profits and the wages continue to be low it may justify the increase in the wage structure itself; in other words, the award of bonus would have some relation to the wages paid to the employees. It is also true that unreasonably high or extravagant claims for bonus cannot be entertained just because the available surplus would justify such a claim. ...The impact of the award of bonus in an industrial dispute on comparable employments or on other employments in the region cannot be altogether ignored, though its effect should not be overestimated either. Having regard to the fact that the distribution of available surplus must inevitably depend in each case on its own facts this Court has generally refused to interfere with the decision of the tribunal on the ground that any decision on the question of distribution should be left to its discretion."

#### BONUS IN BRANCHES OF PARENT CONCERN

In *Burn & Co., Ltd. v. Their Employees* (1957 I LLJ 226), the Supreme Court ruled that all workmen in all the establishments were entitled to share in the available surplus equally. It observed:

"We are wholly unable to appreciate the observation of the Appellate Tribunal that to refuse additional bonus to the union employees would be to penalise them 'not for their own fault but for the laches of the co-workers, who abandoned their claim'. The Tribunal forgets that, on its own finding, if all the workmen made a claim, no bonus could have been declared. It is not a question of their

abandoning their claim but of realising that they have none. If the order of the Appellate Tribunal is to be given effect to, some of the employees of the company would get a bonus, while others not, and as observed in the *Karam Chand Thapar & Bros v. Their Workmen* (1953 LAC 152) that must lead to disaffection among the workers and to further industrial disputes."

In *Lipton Ltd. v. Their Employees* (AIR 1959 SC 676), the Supreme Court approved in effect a series of decisions of the L.A.T. on the question whether an undertaking should be treated as a whole or as comprising separate distinct units for purposes of bonus. It noted:

"We do not think that it is necessary or advisable to lay down any inflexible, general rule as to the basis of a claim for bonus by some of its employees in an industrial undertaking which carries on trade activities in several countries or even in different parts of the same country. So far as foreign countries are concerned, many considerations such as restrictions on foreign remittances and other trade restrictions may have to be taken into account in determining the question, as in *Ganesh Flour Mills*. (AIR 1958 SC 382) There are a number of decisions of labour tribunals, most of which were noticed in *Ganesh Flour Mills v. Employees of Ganesh Flour Mills*, where a distinction has been made between a parent concern and subsidiary concerns or even between different units of the same concern, and, speaking generally, the test laid down for the payment of bonus in such cases is (1) if the different units are so connected together or integrated that the payment of bonus to one section of employees will violate the principle that all workers should share in the prosperity to which they have jointly contributed, or (2) the different units are so separated or unconnected that the trade activity of one and the contribution of labour made in the profits thereof has no necessary connexion with the trade activity and profits of the other units. In the former case the undertaking has been treated as a whole as in *Burn and Co., Calcutta v. Their Employees* (AIR 1957 SC 38); and *Baroda Borough Municipality v. Its Workmen* (AIR 1957 SC 110); in the latter, it has been held that each unit must rest its claim for bonus on the profits made by that unit. Whether a particular case comes under the former category or the latter must depend on its own facts and circumstances, and we may readily agree that the mere keeping of separate accounts may not in all cases be the proper criterion for determining whether the different units are integrated or not."

In the above case, the Supreme Court agreed with the L.A.T. that the Indian workers could claim bonus only if there was an available surplus of profits out of the Indian business.

In *Indian Hume Pipe Co., Ltd. v. Their Workmen*, cited earlier, the company having various branches had settled the claim of bonus for the year in question with its workmen at various branches except at one, the Supreme Court held that the liability of the company to pay the bonus as determined by the industrial tribunal must be determined on all-India basis, ignoring the

fact that the claim for bonus was settled by the company at its other branches. (1959 II LLJ 357) In *Peirce Lesile & Co., Ltd. v. Their Workmen*, the company employed about 800 clerical staff and a large labour force. The demand for bonus for the year 1954-55 was raised and pursued by the clerical staff only and the industrial tribunal distributed a portion of the available surplus as bonus on the basis of the monthly salary bill of the staff alone. The Supreme Court ruled that in such cases the bonus must be calculated on the total wages and salary bill of the employer irrespective of the fact that staff or labour force alone raised the demand for bonus. The Supreme Court added that the fact that the company had maintained balance-sheets of loss and profits departmentwise did not justify the distribution of bonus on the profits departmentwise. (AIR 1960 SC 826)

In *South India Millowners' Association and others v. Coimbatore District Textile Workers' Union and others*, the Supreme Court held:

"In dealing with the question as to whether two units run by the same employer constitute one unit for the purpose of determining the claim for bonus made by workmen employed in such units, several factors are relevant and it must be remembered that the significance of the several relevant factors would not be the same in each case, nor their importance. Unity of ownership and management and control would be relevant factors. So would the general unity of the two concerns; the unity of finance may not be irrelevant and geographical location may also be of some relevance; functional integrality can also be a relevant and important factor in some cases; the test would be whether one concern forms an integral part of another so that the two together constitute one concern, and in dealing with this question the nexus of integration in the form of some essential dependence of the one on the other may assume relevance. Unity of purpose or design, or even parallel or co-ordinate activity intended to achieve a common object for the purpose of carrying out the business of the one or the other can also assume relevance and importance..."

"In the complex and complicated forms which modern industrial enterprise assumes, it would be unreasonable to suggest that any one of the relevant tests is decisive; the importance and significance of the tests would vary according to the facts in each case and so the question must always be determined bearing in mind all the relevant tests and co-relating them to the nature of the enterprise with which the court is concerned." (1962 I LLJ 223)

APPENDIX—V

LIST OF THE JUDGES OF THE LABOUR  
APPELLATE TRIBUNAL\*

1. Ahmed, S. Matin
2. Ansari, A.M.
3. Basu, R.K.
4. Campbell-Puri, K.S.
5. Chakravarty, S.C.
6. Dave, L.P.
7. Dikshitulu, V.N.
8. Gan, M.N.
9. Ghulam Hasan
10. Govindan, N.
11. Gupta, A. Das
12. Gupta, A.T. Das
13. Gupta, K.C.
14. Harnam Singh
15. Jeejeebhoy, F.
16. Jha, L. K.
17. Khanna, B.K.
18. Krishnamurthi, E.
19. Lalkaka, M.D.
20. Lokur, N.S.
21. Mahmood Sheriff
22. Majumdar, J. N.
23. Mathur, G.P.
24. Menon, Govinda
25. Merchant, Salim M.
26. Mitter, R.C.
27. Modak, S.N.
28. Mukherjee, P.R.
29. Nawal Kishore
30. Pillai, K.N. Kunjukrishna
31. Pillai, V.K.
32. Prasad, B.B.
33. Rao, A.V. Krishna
34. Rao, K.P. Lakshmana
35. Reuben, D.E.
36. Sastrai, S.P.
37. Siddiki, K.
38. Singh, S.B.
39. Soni, R.C.
40. Thadani, T.V.
41. Vyas, P.D.
42. Waliullah, M.

\*This list of the Judges of the L.A.T. is given for the benefit of the reader; the period of their tenure has not been indicated.

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## ABBREVIATIONS USED

AIR	—	All India Reporter
FJR	—	Indian Factories Journal (Reports)
IC	—	Industrial Court
ICR	—	Industrial Court Reporter
IT	—	Industrial Tribunal
LAC	—	Labour Appeal Cases
LLJ	—	Labour Law Journal
SC	—	Supreme Court